IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CONFIRMATION CASE No 3 of 2000

with

Criminal Appeal No.540 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

VASHRAM NARSHIBHAI RAJPARA

Appearance:

1. Criminal Confirmation Case No. 3 of 2000
Mr.A.D. Oza, PUBLIC PROSECUTOR with
Mr. K.P. Rawal, Additional Public Prosecutor
for the State
Mr. M.J. Budhabhatti for the respondent

2. Criminal Appeal No.540 of 2000
Mr. M.J. Budhabhatti for the appellant
Mr.A.D. Oza, PUBLIC PROSECUTOR with

Mr. K.P. Rawal, Additional Public Prosecutor
for the State

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/09/2001

C.A.V. Judgment: (Per: M.H. Kadri, J.)

1. On a trial held by the learned Additional Sessions Judge, Rajkot, the appellant has been convicted of the offences punishable under Section 302 of the Indian Penal Code and sentenced to death for murdering his wife and four daughters vide judgment dated May 31, 2000 delivered in Sessions Case No.123 of 1999. The appellant has challenged his conviction as well as death sentence imposed on him by filing the present appeal under section 374(2) of of the Code of Criminal Procedure, 1973 (hereafter referred to as 'Code' for short) whereas the learned Additional Sessions Judge has submitted the proceedings of the Sessions Case No.123 of 1999 to the High Court for the confirmation of death sentence as required by Section 366(1) of the Code and it is numbered as Confirmation Case No.3 of 2000. The Registry, after submission of record and proceedings by the learned Additional Sessions Judge, Rajkot, to the High Court, had sent record and proceedings for printing and, after the paper book was prepared, the matter has been placed before us for final hearing.

2. Briefly stated, the prosecution case is as under:
The accused, Vashrambhai Narshibhai Rajpara (hereinafter to be referred as appellant), was a fruit vendor mainly selling bananas in his hand-lorry in the city of Rajkot. He was married to Savitaben (hereinafter to be referred as 'deceased') and had four daughters - Rajuben alias Nirmala, Harshida, Usha and Guddi - and a son, Kishan, aged about five years. Previously, the family of the appellant was residing in Ashapuranagar locality, Rajkot. Prior to eight months of the date of the incident, i.e. May 21, 1999, the appellant had purchased a house situated at Kiran Society, Lane No.15, Kotariya Road, Rajkot, for the price of Rs.1,75,000/-. The house was

purchased from his nephew, P.W.14, Arvindbhai Bhanjibhai. The appellant had paid Rs.1,35,000/ as part payment of the house and Rs.40,000/- had remained outstanding. As per the prosecution case, all the family members of the appellant had moved to the newly purchased house, but the daughters and the wife of the appellant did not like the newly purchased house and they were pressurizing the appellant to sell the house and purchase another house in some other locality. Therefore, there was a dispute between the daughters and the wife on one hand and the appellant on the other regarding the residential house. Due to the conflict of opinions between the appellant and his wife and daughters, the appellant was agitated. Prior to two days of the incident, the appellant had purchased five liters of petrol in one plastic 'carboy' from Jaynath Petrol Pump, Rajkot, and had kept the 'carboy' in the kitchen. Savitaben, wife of the appellant, had enquired from the appellant as to why he had purchased petrol, as he did not own any vehicle, and the appellant had replied that it might be useful some day. On May 21, 1999, all the family members of the appellants had finished their dinner at around 9 p.m. The appellant and his son, Kishan, aged about five years, had gone to sleep on the terrace of the house whereas his wife Savitaben and four daughters were sleeping in the rear room, which was of the size of 9' x 10 feet, on the ground floor of the house. The appellant around 3 p.m. came down from the terrace and took out 'carboy' filled with petrol and collected petrol in one steel bowl. The appellant sprinkled petrol on his wife and four daughters, who were sleeping in the room. After sprinkling petrol on his wife and four daughters, the appellant lighted a match stick and set them on fire. In the process of sprinkling petrol and lighting the match-stick, the appellant also sustained burn injuries on his left ear, left shoulder and right thumb. Due to sprinkling of petrol, there was a huge fire in the room where the wife and four daughters were sleeping. The appellant, on realising that he would also get burn injuries, ran away from the room by closing the door from outside and went to HUDCO Police Chowky. A Police Constable, who was present at the police chowky, was informed by the appellant that, when he was lighting a lamp of petrol, he sustained burn injuries and his four daughters and wife were seriously caught in a big fire in his house and, therefore, they should be saved. The Police Constable directed the appellant to go to the Civil Hospital for treatment. Therefore, the appellant took an auto-rickshaw and went to the Civil Hospital, where he was examined by P.W.9, Dr. Khimjibhai Dudabhai Makwana, around 3.30 a.m. The Police Constable on duty

at the Civil Hospital made an entry in the Register kept in the Emergency Ward of the Civil Hospital, Rajkot, around 3.40 a.m. being Janwajog Entry No.242 of 1999. According to the entry in the station diary, which was admitted in evidence at Exh.83, the appellant around 3.40 a.m. had informed the Police Head Constable, Chhaturbhai, who was on duty at the Civil Hospital, that he had sustained burn injury while he was preparing tea at his house.

3. Due to the huge fire in the house of the appellant, there was a big blast as a result which the of Television-set and other articles were destroyed and therefore the neighbours had, at once, gathered near the house of the appellant. P.W.6, Bhavesh Tulsibhai, who was residing in the adjoining house had called the fire brigade by sending a telephonic message from the house of one Dhirubhai and, within few minutes, the fire fighters had arrived. The neighbours came to know that due to fire, which had taken place in the house of the appellant, four daughters and the wife had lost their lives. All the five dead bodies of four daughters and the wife were removed to the Civil Hospital, Rajkot. Dead bodies of five ladies were brought to the hospital by the brother of the appellant, Maganbhai Narshibhai, P.W.13, who had identified the dead bodies as those of the four daughters and the wife of the appellant.

4. After removal of the dead bodies to Civil Hospital and the Police Head Constable, i.e. Chaturbhai, who was on duty at the Civil Hospital, had informed Bhaktinagar Police Station to the effect that P.W. 9, Dr. K.D. Makwana, on examination of bodies of Savitaben, wife of Vashrambhai, aged 43, Rajuben, daughter of the appellant, aged about 20, Harshidaben, daughter of the appellant, aged about 14, Guddiben daughter of the appellant, aged about 10, and an unknown person who could not be identified, had declared them dead. Accordingly, Entry No.47 of 1999, Exh.85 relating to accidental deaths, was recorded at Bhaktinagar Police Station at 4.20 a.m., and investigation was handed over to PSI, N.K. Chanchaiya. Inquest on all the five dead bodies was held by PSI Mr. Chanchaiya of Bhaktinagar Police Station, and the dead bodies were sent for post-mortem examination. P.W.1, Dr. Bharatkumar Pranshanker Dholakiya, Medical Officer, at Civil Hospital, Rajkot, performed autopsy on the dead bodies of Savitaben, Rajuben and Harshidaben whereas P.W.2, Dr. Jayantilal Harilal Joshi, who was also serving as Medical Officer, at Rajkot Civil Hospital, performed post-mortem of dead bodies of Ushaben, and Guddiben, between 9.30

a.m. and 10.30 a.m.

5. After the post-mortem examination of the five dead bodies, the Medical Officers had given the opinion that the principal cause of death was as a result of shock due to extensive burns all over each body. However, the Medical Officers had preserved 'viscera' of five dead bodies which was sent for chemical analysis to the Forensic Science Laboratory. After the analysis of 'viscera' by a Chemical Analyst, at Junagadh, he had given an opinion that the cause of death was due to cardio respiratory failure resulting from extensive burn injuries. P.W.16, P.I. Kalekhan Alamkhan Kureshi, who was at the relevant time serving at Bhaktinagar Police Station, Rajkot, went to the place of incident i.e. the house of the appellant and drew the panchanama of the scene of offence in the presence of two panchas. The said panchanama was proved by panch No.1, Chhelubha Shivubha, P.W.8. The said panch No.1 had also gone to call the brother of the appellant, namely, Magan Narshi, P.W.13. P.I. Kureshi had also called Circle Inspector by writing a yadi to prepare a map of the scene of offence. Accordingly, P.W.3, Jagdish Naginlal Dave, who was at the relevant time working as Circle Inspector, at Rajkot, had drawn map of the scene of offence, which was admitted in evidence at Exh.20. P.I. Kureshi during investigation had recorded statements of witnesses, Kanchanben Tulsibhai, Bhavesh Tulsibhai, Chhelubha Shivubha, Madhavji Kalabhai, Arvind Banjibhai, Dilipbhai Virjibhai, Maganbhai Narshibhai, etc. Incriminating articles recovered during recording of panchanama from the scene of offence were also sent to the Forensic Science Laboratory for analysis.

6. P.I. Kureshi, on receiving the information that the appellant had sustained burn injuries and was admitted in the burns ward at Civil Hospital, Rajkot, straightaway went to the burns ward of the hospital. The appellant lodged the complaint before P.I. Kureshi, which was recorded between 7 a.m. and 8 a.m. on May 22, 1999 implicating himself. P.W.10, Dr. Patolia had made an endorsement below the complaint lodged by the appellant that, 'patient is conscious and well oriented'. The endorsement was dated May 22, 1999 at 9 a.m. The said complaint was sent to Bhaktinagar Police Station, Rajkot City, which came to be numbered as C.R.No.I-233 of 1999 against the appellant for the offences punishable under Section 302 Indian Penal Code. Investigation of the above crime was handed over to P.I.Kureshi. P.I. Kureshi sent a yadi to the Executive Magistrate, Rajkot City, requesting him to record the dying declaration of

the appellant, who had sustained burn injuries and was admitted in the burns ward of the Civil Hospital. The said yadi was received by P.W.4, Executive Magistrate, Naranbhai Ramjibhai Makwana at 10 a.m. P.W.4, Makwana, reached the Civil Hospital, Rajkot, at 10.30 a.m. P.W.4, Makwana, gave his identification as Executive Magistrate to Dr. Shilu who was present in the burns ward and informed the Doctor that he had come to record the dying declaration of Vashram Narshibhai (appellant). Accordingly, Dr. Shilu made an endorsement below the yadi received by the Executive Magistrate that 'patient was conscious'. P.W.4, Mr. Makwana, Executive Magistrate, started recording of dying declaration of the appellant at 10.40 a.m., which was concluded at 11 a.m. After recording of dying declaration was over, an endorsement of the Doctor was obtained by the Executive Magistrate, which indicated that the patient had remained conscious throughout the recording of dying declaration. The said endorsement of the Doctor present at the Hospital was obtained at 11 a.m. The appellant had remained as an indoor patient in the Civil Hospital, Rajkot, upto June 3, 1999. On discharge of the appellant from the hospital, he came to be arrested under an arrest panchnama on June 3, 1999 around 18.30 hrs in connection with C.R. No.I-233 of 1999 of Bhaktinagar Police Station, for offence under Section 302 of the Indian Penal Code.

7. After completion of investigation, P.I. Kureshi, submitted a chargesheet on June 22, 1999 against the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code in the Court of learned Chief Judicial Magistrate, Rajkot, which came to be registered as Criminal Case No. 3197 of 1999. As the offence under Section 302 of the Indian Penal Code is exclusively triable by a Court of Sessions, the learned Chief Judicial Magistrate, Rajkot, by his order dated July 15, 1999, committed the case to the Court of Sessions, Rajkot, for trial which came to be numbered as Sessions Case No.123 of 1999. The charge at Exh.1 was framed against the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried. In order to prove charges against the appellant, the prosecution examined (I) P.W.1, Dr. Bharatbhai Pranshanker Dholakiya, Exh.5, who performed post-mortem on the bodies of deceased Savitaben, Rajuben, and Harshidaben, (II) P.W.2, Dr. Jayant Harilal Joshi, Exh.13, who performed post-mortem on the bodies of deceased Ushaben and Guddiben; (III) P.W.3, Circle Inspector, Jagdishchandra

Naginlal Dave, Exh.18, who prepared map of scene of offence, (IV) P.W.4, Executive Magistrate, Naranbhai Ramjibhai Makwana, Exh. 76, who recorded dying declaration of the appellant, (V) P.W.5, Kanchanben Tulsibhai, Exh.78, neighbour of the appellant; (VI) P.W.6, Bhavesh Tulsibhai, Exh.79, also a neighbour of the appellant and son of P.W.5, Kanchanben; (VII) P.W.7, Madhavji Kalabhai, Ex.80, fruit vendor who had helped the appellant by giving loan of Rs.25,000/-; (VIII) P.W.8, Chhelubha Shivubha, Exh.81, neighbour of the appellant who had also acted as panch at the time of drawing of the panchanama of scene of offence; (IX) P.W.9, Dr. Khimjibhai Dudabhai Makwana, Exh.95, who had examined the appellant at the Civil Hospital, Rajkot, on May 22, 1999, (X) P.W.10, Dr. Sanjaybhai Muljibhai Patolia, Exh.97, who had made endorsement below the complaint lodged by the appellant and the dying declaration recorded by the Executive Magistrate; (XI) P.W.11, Abidali Siddiqmiyan Kadri, Exh.99, ASI, who had sent the complaint lodged by the appellant to Bhaktinagar Police Station and who had handed over investigation to P.I. Kureshi; (XII) P.W.12, Dilipbhai Virjibhai, Exh.102, who was working as Cashier at Jagnath Petrol Pump, from where the appellant had purchased five liters of petrol; (XIII) P.W.13, Maganbhai Narshibhai, Exh.103, brother of the appellant; (XIV) P.W.14, Arvind Bhanjibhai, Exh.104, who is nephew of the appellant and from whom the appellant had purchased the house where the incident had taken place. (XV) P.W.15, ASI, Dilubha Jetnubha, Exh.105 who had entered the message, which was received from the Civil Hospital, in the station diary of the Bhaktinagar Police Station on May 22, 1999 around 3.40 a.m. and (XVI) P.W.16, P.I. K.A. Kureshi, Exh. 106, who had recorded complaint lodged by the appellant, and carried out investigation of C.R.No.I-233 of 1999. The prosecution also produced the following documentary evidence to prove the charges against the appellant: (1) Yadi Exh.6 sent by the Bhaktinagar Police Station to the Medical Officer, Civil Hospital, Rajkot, to perform post-mortem of dead body of Savitaben; (2) Post-mortem notes of body of Savitaben, Exh.7; (3) Certificate of cause of death of Savitaben, Exh.8; (3) Post-mortem notes of body of Rajuben Exh.9; (4) Certificate of cause of death of Rajuben Exh.10; (5) Post-mortem notes of body of Harshidaben Exh.11; (6) Certificate of cause of death of Harshidaben Exh.12; (7) Post-mortem notes of Ushaben,Exh.14; (8) Certificate of cause of death of Ushaben, Exh.15; (9) Post-mortem notes of body of Guddiben Exh.16 (10) Certificate of cause of death of Guddiben, Exh.17; (11) yadi sent to the Circle Inspector to draw map of scene of incident, Exh.19; (12) map of scene of incident, Exh.20; (13) yadi sent by

Police Head Constable, who was posted at the Civil Hospital, Rajkot, indicating reasons given by the appellant for sustaining burn injuries which were also entered in the station diary of Bhaktinagar Police Station at Exh.21; (14) yadi sent to PSI, Chanchaiya, IPSO, Bhaktinagar Police Station, Exh.22, (15) inquest panchanama of five dead bodies Exh.23; (16) panchanama of physical condition of the appellant Exh.24; (17) forms sent to FSL with regard to visceras collected from the dead bodies, Exh.25 to Exh.28; (18) receipts of FSL, Exh.29 to Exh.34; (19) reports of FSL with regard to chemical examination of visceras Exh.29 to Exh.34; (20) Entry of telephone message recorded by the fire brigade of Rajkot Municipal Corporation, Ex.50; (21) arrest memo of the appellant, Exh.61; (22) reports of FSL, Exh.63 to Exh.72; (23) yadi sent to the Executive Magistrate to record dying declaration of appellant Exh.77; (24) panchanama of scene of incident Exh.82; (25) entries recorded in Bhaktinagar Police Station, with regard to incident as narrated by the appellant at Exh.83 to Exh.87; (26) arrest panchanama of the appellant, Exh.88; (27) true copies of log-sheet Exh.90; (28) rough map prepared by the IO at the scene of offence at Exh.89; (29) injury certificate of the appellant at Exh.96; (30) report under Section 157 of the Code of Criminal Procedure handing over investigation to P.I.K.A.Kureshi, Exh.100; and (31) complaint lodged by the appellant, Exh.107.

8. After recording of the evidence of prosecution witnesses was over, the learned Additional Sessions Judge explained the appellant the circumstances appearing against him and his statement came to be recorded under Section 313 of the Code of Criminal Procedure. The appellant stated that he did not want to examine any witness in his defence. In reply to the questions put to the appellant by the learned Additional Sessions Judge, generally, the case of the appellant was that of denial. However, during the course of recording of further statement, the appellant tendered his written explanation-cum-reply at Exh.109 in vernacular language. The written reply was taken on record by the learned Additional Sessions Judge on February 21, 2000. Free English translation of written explanation-cum-reply at Exh.109 is as under:

"I the undersigned respectfully state that my explanation in this case is as under:

(1) The correct version of the incident is that I was

thinking to commit suicide before the incident. So I brought petrol on the day of the incident and I thought to commit suicide in the night of the incident. Therefore, I took out petrol in the muddamal bowl. At that time weight of petrol was felt less in weight and I was going by carrying the bowl trembling and the bowl had fallen down from my hand and petrol spread around. Thereafter again I took out petrol in the bowl and at that time petrol was spilt on the cot as my leg got struck with the cot of my wife. Thereafter, I sat for sometime and put the petrol can and the bowl in the kitchen. I dropped the idea of committing suicide. After some time I ignited the stove and suddenly there was a blaze and fire. I was not knowing that petrol might have been leaked from the can. I also got burnt and I came out of the house. In the meantime, the fire increased quickly and the smoke started coming out. I shouted and went to the police chowky and told to call the fire brigade. They sent me to the hospital. Thereafter, I came to know that my wife and daughters have expired due to burns. I have neither put them on fire nor killed.

(2) After purchasing this house, I purchased another house as we did not like this house. I was trying to sell this house.

(3) It is not true that I have killed my wife as she did not like the house.
I am innocent and it is required to declare me innocent."

9. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and after hearing arguments advanced by the learned Additional Public Prosecutor and the learned counsel for the defence, concluded that the wife of the appellant and four daughters had succumbed to serious burn injuries sustained by them in the fire and the said fact was proved by the evidence of the Medical Officers, namely, P.W.1, Dr. Bharat Pranshanker Dholakiya and P.W.2, Dr. Jayantilal Harilal Joshi. The learned Additional Sessions Judge also concluded that, as per the certificate of the Doctors, the cause of death of all the five persons was due to shock resulting from extensive burn injuries all over the body. The learned Additional Sessions Judge noticed that in this case, there was no direct evidence tendered by the prosecution against the appellant and that the entire prosecution case rests on

circumstantial evidence. The learned Additional Sessions Judge considered the circumstances brought on record and concluded that the following circumstances, as enumerated in paragraph 6 of the judgment, were proved by the prosecution against the appellant beyond reasonable doubt.

(1) A dispute was going on between the appellant and the wife and the daughters about the house in which they were residing.

(2) Though the appellant did not possess any vehicle, he had purchased five liters of petrol and had kept in a plastic can in the kitchen.

(3) On the day of the incident, after finishing the dinner, all the family members had gone to sleep and, at about 3 a.m. the incident had taken place when the appellant was present in the house.

(4) The appelant had poured petrol on his wife and four dauhters who were asleep and had set them on fire which had resulted in their death, whereas the appellant had placed his minor son in safe place i.e. on the terrace and had saved his life.

(5) The fire, which had taken place, was so huge that all the five ladies were roasted alive because of use of highly inflammable substance, namely, petrol. The appellant had poured entire five liters of petrol on the bodies of five ladies, with the result that they had no chance to escape from the interior room, wherein, they were sleeping.

(6) The appellant had not tried to save the lives of five ladies nor did he try to put out the fire, but, instead, he had ran away from the house and gone to the hospital, where, he had informed that he had sustained burn injuries due to flames of kerosene stove while preparing tea.

(7) At the time of admission in the hospital, the appellant had not informed or declared that his wife and four daughters had sustained burn injuries due to fire which had taken place due to sprinkling of petrol on the bodies of the wife and four daughters.

(8) The report of Forensic Science Laboratory Exh.41 and the panchanama of the place of incident clearly indicated that, from the place of incident, the bowl, half-burnt pieces of quilt, and coir thread of wooden cot were found, in which, the presence of petrol was detected.

(9) The defence raised by the appellant, in his written reply Exh.109, namely that he wanted to commit suicide and, therefore, he had filled petrol in a bowl and due to his nervousness, petrol got splashed over the cot on which the wife was sleeping and, thereafter, he had again gone to fill petrol in the bowl which also got

splashed in the room, where his wife and four daughters were sleeping, and, thereafter, as he was preparing tea on a kerosene stove, there was a huge fire in the house, was not probable and cannot be believed.
(10) The theory of committing suicide was totally false and got-up by the appellant as the petrol was not detected on his body.
(11) The theory about fire having taken place due to electric short-circuit was also clearly ruled out and it was raised to mislead the Court.
After holding that the abovementioned circusmtances were proved by the prosectuion against the appellant beyond pale of doubt, the learned Additional Sessions Judge referred to the decision of the Supreme Court in the case of Lekhraj Alias Harisingh v. State of Gujarat reported in AIR 1998 Supreme Court 242, and concluded that when the fire had taken place the appellant was inside the house which clearly established beyond reasonable doubt that the appellant and the appellant alone had poured petrol on the bodies of five ladies and committed their murders.

10. On the basis of abovereferred to conclusions, the learned Additional Sessions Judge has convicted the appellant of the offence under Section 302 of the Indian Penal Code but acquitted the appellant of the offence punishable Under Section 201 of the Indian Penal Code. The said order of conviction was recorded on March 29, 2000. On the day of recording of conviction, the appellant filed application Exh.113 praying for time and the case was adjourned to March 30, 2000, for hearing the appellant on the question of sentence. Thereafter, the application Exh.114 was tendered by the appellant that, if the Court was inclined to award penalty of death, he wanted to lead evidence with regard to his mental condition. The said application was granted and the case was adjourned to March 31, 2000. Again, application Exh.115 was submitted by the appellant that, previously, the appellant had taken treatment from Dr. Kakkad and Dr. Arvindbhai with regard to his mental illness and both the Doctors had died and the case papers were destroyed in the fire which had taken place in his house and, therefore, he prayed that to assess his mental condition, he should be referred to Jamnagar Mental Hospital. He also prayed that, in case of necessity, he would lead evidence and examine witnesses in his defence. The learned Additional Sessions Judge, by order dated April 1, 2000, rejected the application filed by the appellant to refer him to Jamnagar Mental Hospital, as, according to the learned Additional Sessions Judge, sufficient opportunity was already given to the

appellant. The learned Judge thereafter ascertained from the appellant whether he wanted to lead any evidence in his defence and at that point of time the appellant did not claim that he wanted to examine witness in his defence. The learned advocate for the appellant filed an application at Exh.116 praying to grant time of 20 days as the appellant wanted to challenge the order dated April 1, 2000 in the higher forum, by which the application of the appellant permitting him to lead evidence and to refer him to Jamnagar Mental Hospital was rejected. The learned Additional Sessions Judge, Rajkot, granted time to the appellant till April 7, 2000, to move the higher forum.

11. The record indicates that the learned advocate for the appellant filed Misc. Criminal Application No.418 of 2000 before the learned Sessions Judge, Rajkot, for transfer of Sessions Case No.123 of 1999 to another Court. In the said application, an application at Exh.3 was filed for interim orders to stay further proceedings of Session Case no.123 of 1999 wherein the learned Sessions Judge, Rajkot, by order dated April 1, 2000, passed the following orders.

"Heard. In the interest of justice, further proceedings be stayed in S.C. No.123/99. Yadi to the Court of learned Addl. Sessions Judge,Rajkot, where this case is pending."

Ultimately, the learned Sessions Judge, after hearing the parties, dismissed the application for transfer, being Criminal Misc. Application No.418 of 2000, vide his order dated May 12, 2000. After dismissal of the application for transfer, the learned advocate for the appellant again filed application Exh.8 in Misc. Criminal Application No.418 of 2000 praying to grant time of 30 days as the appellant wanted to move the higher forum against the order of the learned Sessions Judge, Rajkot, dismissing the application for transfer. On the said application, the learned Sessions Judge, Rajkot, passed the following order on May 12, 2000.

"Heard both the sides.
Accused is in judicial custody. Substantial questions of law and facts are involved in this case. There is no harm if the accused is heard on the point of sentence after some time. Sufficient opportunities should be given to the accused as well as the prosecution. Therefore, this application is granted partly. Further proceeding of above said S.C. 123/99 is hereby suspended till 29.5.2000. Yadi to the Court of Learned Addl.

S.J."

12. The record indicates that the appellant had moved the High Court by filing Criminal Revision Application No.161 of 2000 against the order of the learned Additinal Sessions Judge not permitting him to lead evidence and not referring him to Jamnagar Mental Hospital to assess his mental status. Criminal Revision Application No.161 of 2000 was dismissed by the High Court (Coram: Y.B. Bhatt, J.) by order dated May 4, 2000. The order dated May 4, 2000 reads as under:

"1. This is a revision application under section 397 read with section 401 of the Criminal Procedure Code at the instance of the original accused against whom conviction under section 302 of IPC has been recorded by the Sessions Court, and the matter is pending hearing for the purpose of imposition of sentence. At this stage the accused gave an application stating that he is of unsound mind and therefore he is required to be examined by qualified specialist from Jamnagar Mental Hospital and hence he should be referred to the said hospital for the said purpose.
2. The Sessions Court heard the learned counsel for the respective parties in the said application, and for cogent and valid reasons rejected the same. It is the rejection of this applciation which is the subject matter of the present revision.
3. Firstly, this application is not maintainable under section 397(2) of the Criminal Procedure Code, and even otherwise I am satisfied that the application has been made by the accused only for the purpose of causing delay. I see no substance in the present revision and the same is, therefore, dismissed."

It requires to be mentioned that, even though the High Court, by its order dated May 4, 2000, had rejected Criminal Revision Application No.161 of 2000, which was directed against the order of the learned Additional Sessions Judge refusing to grant time to the appellant to produce evidence with regard to his mental condition, the learned counsel for the appellant before the Sessions Court did not inform the Court that the Criminal Revision Application No.161 of 2000 was already dismissed by the High Court on May 4, 2000. Further, the learned counsel for the appellant, after the Sessions Court had rejected Criminal Misc. Application No.418 of 2000 on May 12, 2000, had filed an application for extension of stay of further proceedings of Sessions Case No.123 of 1999 which was granted by the learned Sessions Judge so as to enable the appellant to challenge the said order in the higher

forum. All these factors indicated that the appellntt wanted to any how delay the order of sentence and did not want the Court of the learned Additional Sessions Judge who had recorded conviction of the appellant to pass further order in accordance with law. As noted earlier, the learned Sessions Judge, Rajkot, had granted time to the appellant to move the higher forum but the appellant failed to obtain any order and, therefore, the learned Additional Sessions Judge heard the appellant and his learned advocate and the learned Additional Public Prosecutor on the question of sentence on May 31, 2000. The learned Additional Sessions Judge observed that, in view of the heinous crime which was committed by the appellant in cold-blooded manner and as a result of pre-planned strategy, the case called for a severe and maximum punishment. It was further observed that, as per the principles laid down by the Supreme Court in a catena of decisions, circumstances of the case warranted that the appellant should be hanged till death. The learned Additional Sessions Judge observed that there were aggravating circumstances which called for a severe punishment. While giving special reasons, the learned Additional Sessions Judge concluded that this was a rarest of rare case wherein penalty of death was needed to be awarded on the appellant. Therefore, the learned Judge has, by his order dated May 31, 2000, imposed penalty of death on the appellant for the offence under Section 302 of the Indian Penal Code and fine of Rs.5000/- in default R.I. for two years, which has given rise to filing of Criminal Appeal No.540 of 2000.

13. Confirmation Case No.3 of 2000 has been placed by the Office in view of the submission made by learned Additional Sessions Judge under Section 366(1) of the Code of Criminal Procedure. As per the procedure laid down in Gujarat High Court Appellate-Side Rules, 1993, after preparation of paper book and printing of record and proceedings of Session Case No.123 of 1999, the Office has placed Confirmation Case No.3 of 2000 with Criminal Appeal No.540 of 2000 before this Court, for hearing. As both, Confirmation Case No.3 of 2000 and Criminal Appeal No.540 of 2000, arise from the same judgment and order, they are heard together and disposed of by this common judgment.

14. During the course of the hearing of the confirmation case and the conviction appeal, the learned Public Prosecutor filed Criminal Misc. Application No.1863 of 2001 and Criminal Misc. Application No.2006 of 2001, inter alia, contending that, even though during investigation statement of independent witness,

Narainbhai Bhikhabhai Gajipara, was recorded, he was dropped by the learned Additional Public Prosecutor who had conducted the trial, and a request was made in the above applications to examine Police Head Constable, Chhaturbhai Dhanjibhai, and Unarmed Police Constable, Pankaj Hiralal, whose evidence would have disclosed a different version given by the accused with regard to occurrence of the incident. In the said applications, it was also contended that the Doctor, who performed post-mortem on five bodies, had not categorically deposed that five persons who had succumbed to burn injuries had died homicidal deaths. After elaborately hearing the learned Public Prosecutor and learned counsel for the defence, this Court in exercise of powers under Section 367(1) of the Code by order dated March 28, 2001 had allowed two Misc. Criminal Applications and had directed the Sessions Court, Rajkot, to record evidence of witnesses, namely, Narainbhai Bhikhabhai Gajipara, Head Constable, Chaturbhai Dhanjibhai and Unarmed Police Constable Pankaj Hiralal as examination of the witnesses had bearing upon the guilt or otherwise of the appellant. This Court also permitted the prosecution to re-examine P.W.1, Dr. Bharatbhai Pranshanker Dholakiya, and P.W. 2, Dr. Jayant Harilal Joshi, with regard to burn injuries sustained by deceased five persons and the cause of death. Further, this Court had permitted the prosecution to examine the Doctor who had first treated the appellant at the Civil Hospital, Rajkot, and before whom the appellant had narrated the version of the incident which was ultimately recorded in the Register which was maintained at the Casualty Ward of the Civil Hospital, Rajkot. Accordingly, the record and proceedings were sent back to the Sessions Court, Rajkot, with direction to examine four witnesses and the two Doctors who had performed post-mortem of five deceased persons.

15. Accordingly, the prosecution examined P.W.17, Police Head Constable, Chhaturbhai Dhanjibhai, at Exh.132, who was on duty at the Civil Hospital, Rajkot, in casualty ward on May 22, 1999, between 00 hrs to 8 hrs. His evidence discloses that the appellant was admitted in the Civil Hospital, Rajkot, and, at that time, he was on duty at the Civil Hospital. P.W.18, Narainbhai Bhikhabhai Gajipara, who was residing in an adjoining house of the accused, was examined at Exh.134. Unarmed Police Constable Pankajkumar Hiralal, who was on duty at Hudco Police Chowky Bhaktinagar Police Station on the date of incident, was also examined as P.W.19, Exh.135. According to the witness, the accused had approached him at the Hudco Police Chowky around 3 to

3.30 a.m. and had told him that fire had taken place at his residence while he was lighting a petrol lamp. The case of this witness is that the appellant had requested the witness to go to his residence and to save his wife and children. This witness had sent message through wireless to Bhaktinagar Police Station about the incident.

16. The prosecution recalled P.W.1, Dr. Bharatbhai Pranshanker Dholakiya, P.W.2 Dr. Jayant Harilal Joshi and P.W.9, Exh.95, Dr. Himji Budhabhai Makwana and re-examined them and they were also cross examined at length by the learned counsel for the accused. The Doctors opined that all the five persons had died due to burn injuries and the said burn injuries were sufficient in the ordinary course of nature to cause their death. The Doctors also opined that the burn injuries sustained by five deceased persons were antemortem and not post-mortem as suggested by the learned counsel for the accused. However, the Doctors could not opine with certainty whether burn injuries were accidental or homicidal. P.W.9, Dr. Makwana, who was on duty at the Civil Hospital, Rajkot, on May 22, 1999 between 8 p.m. to 8 a.m., deposed that at 3.30 a.m. the appellant was brought in an ambulance van to the hospital and he was produced before him along with case papers for medical examination. He produced case papers of the appellant at Exh.126. He deposed that, when he (Dr. Makwana) questioned the appellant how he had sustained burn injuries, the appellant had informed him that, when he was preparing tea at his residence on a kerosene stove, due to flame of the stove, he had sustained burn injuries. Dr. Makwana deposed that thereafter he had sent his peon to inform the police constable at the casualty ward that it was a medico-legal case. Thereafter, P.W.17, police head constable, Chaturbhai Dhanjibhai, had approached him in the emergency ward of the Civil Hospital, Rajkot. Dr. Makwana had also deposed that at 4.10 a.m. bodies of five persons in the burnt condition were brought before him and on examination he had declared that five persons had succumbed to burn injuries. During his deposition, Dr. Makwana produced case papers of all five deceased persons at Exh.127 to 131. After recording of the evidence of the witnesses as directed by this Court, the accused was questioned on the additional evidence brought on the record of the case and his further statement came to be recorded under Section 313 of the Code. In his further statement, the accused pleaded that he did not know how five deceased persons sustained burn injuries. According to the accused, he was sent to the Civil Hospital in an

ambulance. In his further statement, he stated that, in the night of the incident, he had severe head-ache and therefore he was preparing tea by lighting kerosene-stove, but, all of a sudden, there was a huge fire. He admitted that Head Constable, Chhaturbhai Dhanjibhai, had questioned him and he had made a statement before the witness that due to fire in his house, there was a big blast and he had come out of the house by raising cries as he had sustained burn injuries. He stated that, while he was coming out of the house, till that time, his family members had not sustained burn injuries. He admitted that, on the night of the incident, he himself and his son were sleeping on the terrace. In his further statement, the accused stated that on his return to his house under police escort, he saw that attempts were made to extinguish the fire which had taken place in his house. The appellant admitted that he had first approached P.W.19 Unarmed Police Constable, Pankajkumar, at Hudco Police Chowky, for taking help to extinguish fire. He denied that he had narrated the incident of fire by making statement before Unarmed Police Constable, Pankajkumar, that fire had taken place while he was lighting a petrol lantern. He has stated that entries in the register, which was kept at the Civil Hospital, were fabricated. At the end, the appellant, in his further statement, stated that the police has made out a false case against him and he had not sprinkled petrol on his wife and four daughters nor set them on fire.

17. After the receipt of further and additional evidence recorded by the Sessions Court, Rajkot, the Registry has placed Confirmation Case No.3 of 2000 and Criminal Appeal No.540 of 2000 before us for further hearing.

18. Mr. M.J. Budhabhatti, learned counsel for the appellant, has contended that there are no eye-witnesses to the incident and the prosecution case solely rests on the circumstantial evidence and, unless the whole chain of circumstances is established by the prosecution, the appellant cannot be convicted of the offence under Section 302 of the Indian Penal Code. The learned counsel for the appellant has contended that the only evidence against the appellant which is proved by the prosecution is that the appellant was present in his residence on the fateful night and he was seen running away around 3 a.m. from the house, when the fire had taken place in the house, but this evidence being not of incriminating nature, the conviction should be set aside. The learned counsel for the appellant has contended that

the First Information Report Exh.107 lodged by the appellant himself before the Police Inspector cannot be read in evidence because it was made by the appellant before the Police Officer and therefore it was hit by the provisions of Section 25 of the Evidence Act. The learned counsel for the appellant has further contended that the Doctors who performed the post-mortem on five dead bodies did not specifically depose that all the five persons had died a homicidal death and the injuries found on the dead bodies were ante-mortem. The learned counsel for the appellant has contended that, in case of circumstantial evidence, the motive assumes great importance and, in the present case, the prosecution has miserably failed to prove the motive on the part of the appellant for setting ablaze five persons alive. It is contended by the learned counsel for the appellant that, the subsequent conduct of the appellant that, after sustaining injuries due to fire in his house, he had, at once, gone to the nearest police chowky and requested the Police Constable on duty to call for fire-brigade to extinguish fire in his house and to save his family members, supports the theory of the appellant that the fire had taken place due to the accident. The learned counsel for the appellant has contended that, when the learned Additional Sessions Judge held that the appellant had committed heinous crime of causing death of five family members, the learned trial Judge, before imposing the extreme sentence of death on the appellant had not followed the procedure under Section 235(2) of the Code of Criminal Procedure in as much as the appellant was not afforded ample opportunity to lead evidence regarding his mental imbalance nor the learned trial Judge has assigned special reasons for imposing death sentence on the appellant and therefore this is not a case which can be termed rarest of rare case wherein extreme penalty of death sentence was required to be imposed. The learned counsel for the appellant has in the alternative contended that the appellant had acted due to mental imbalance as he was under pressure of his family members to find out alternative accommodation even though he was indebted and therefore his crime should be viewed with sympathetic approach and the death sentence imposed on the appellant be commuted to imprisonment for life.

19. On the other hand, learned Public Prosecutor, Mr. A.D. Oza, assisted by the learned Additional Public Prosecutor, Mr. K.P. Rawal, has contended that the Doctors who performed post-mortem had deposed that all the five persons sustained burn injuries which were sufficient in the ordinary course of nature to cause death and as the Doctors in their evidence have opined

that all the injuries found on the five dead bodies were ante-mortem and not post-mortem, the fact that they died homicidal death is proved. The learned counsel for the prosecution has submitted that merely because the Doctors conducting autopsy were not in a position to come to a definite opinion whether the death was accidental or homicidal, the Court does not, on that score, become helpless, if other evidence or circumstances prove that the appellant was responsible for causing death of five family members by pouring petrol and setting them on fire and, in view of clinching circumstantial evidence against the appellant, his conviction should be upheld. In support of the submissions, the learned counsel for the prosecution has placed reliance on the decision in the case of State of Kerala vs. Mani Alias Chandra, reported in 1992 Criminal Law Journal 1682. The learned counsel for the prosecution has submitted that the appellant was found present at his residence on the fateful night and he had gone to sleep on the terrace along with his male child and as the appellant had selected early morning hours around 3 a.m. for causing murder of five female members of his family, when they were in deep sleep, his conviction is well founded. The learned counsel for the prosecution has contended that the appellant had, before the date of the incident, purchased five liters of petrol and stored it in his house in a plastic can even though he did not possess any vehicle and has executed pre-planned murders, and therefore his appeal should be dismissed. The learned counsel for the prosecution has contended that the theory of the appellant that he wanted to commit suicide and therefore he had taken out petrol in a steel bowl and, all of a sudden, petrol got splashed on the floor and, thereafter, he had changed the idea of committing suicide and that as he was having severe head-ache, he had tried to prepare tea by lighting a kerosene stove and, while preparing tea, due to accidental fire, five family members had sustained burn injuries, was highly improbable looking to the evidence and the circumstances proved by the prosecution and, therefore, the ame should be disbelieved. The learned counsel for the prosecution has contended that the appellant had taken out petrol in a steel bowl and after pouring the same on the five family members had set them on fire and the explanation of the appellant that he was preparing tea in the kitchen is found to be false, because, at the time of drawing panchanama, no stove, sugar, milk and tea leaves were found in the kitchen his appeal should be dismissed. Reliance is placed by the learned counsel for the prosecution on the decision of the Supreme Court in the case of State of Tamilnadu vs. Rajendran, reported in AIR 1999 Supreme Court 3535, in

support of the contention that, in a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. The learned counsel for the prosecution has submitted that due to pouring of petrol on five family members, a huge fire had taken place in which the appellant had also sustained burn injuries and he had run away from the place of incident, leaving five female members of his family in burning condition and did not care to save them and this conduct being relevant should be taken into account. The learned counsel for the prosecution has submitted that this strong piece of evidence was sufficient to hold the appellant guilty of heinous crime. The learned counsel for the prosecution has also submitted that different versions given by the appellant before the Police Constable on duty at HUDCO police chowky, the Doctor on duty at the Civil Hospital, Rajkot, and the Investigating Officer, who recorded his complaint, were self contradictory which showed that the conduct of the appellant was reprehensible and highly incriminating as he wanted to shield heinous crime committed by him. According to the learned Public Prosecutor, and the conduct of the appellant was clearly admissible under Section 8 of the Indian Evidence Act, as part of res-gestae, as evidence of conduct, immediately after occurrence and should be taken into consideration by the Court. The learned counsel for the prosecution has contended that the explanation offered by the appellant was quite improbable and it runs counter to his defence. The learned counsel for the prosecution has submitted that the report of the FSL also indicated that, on all the incriminating articles, smell of petrol was detected. It is submitted that the clothes put on by the appellant were also sent to the FSL but no marks of petrol were detected. The learned counsel for the prosecution has contended that the inquest panchanama of the five dead bodies showed that knees and hands of all the five family members who succumbed to burn injuries were in a flexed condition and in pugilistic attitude which suggested that they had died in deep sleep when the appellant had poured petrol on them and set them on fire. According to the learned Public Prosecutor, the physical conditions, in which the dead bodies were found, as noted in the inquest panchanama, suggested that all the five persons had no opportunity to save themselves or run and escape. The learned counsel for the prosecution has submitted that the prosecution has proved the motive behind commission of murder of five family members by the

appellant by leading evidence which showed that the family members did not like to stay in the house in which the incident had taken place and, therefore, the appellant who was annoyed wanted to get rid of them. The learned counsel for the prosecution has contended that, as the appellant was indebted due to purchase of the present house and, as there was pressure from his family members to purchase a new house by selling the present house, he had committed heinous murders to get rid of his family members who were insisting to change the house. The learned counsel for the prosecution has also contended that the oral evidence of the neighbours examined by the prosecution coupled with other evidence in the nature of inquest panchanama, panchanama of scene of offence, report of FSL, and written reply of the appellant tendered at Exh.109, has proved beyond doubt that the appellant and the appellant alone was the person who had caused murder of five family members. The learned counsel for the prosecution has submitted that the prosecution had proved the complete chain of circumstances by leading cogent and convincing evidence which had shown beyond doubt the guilt of the appellant. The learned counsel for the prosecution has submitted that the learned trial Judge had given special reasons for imposing death sentence on the appellant as this is the rarest of rare case wherein the extreme penalty was called for. The learned counsel for the prosecution has submitted that, to take revenge on his family members, the appellant had selected five female members for setting them on fire, by saving his only male child, which also showed that the appellant had unholy design in his mind to finish all the female members of the family who were making grievance before him to change the house. The learned counsel for the prosecution has contended that the appellant does not deserve any sympathy and the appeal filed by him be dismissed and the death sentence imposed on him be confirmed.

20. We have heard the learned counsel for the parties and reappreciated as well as reviewed the whole evidence on record minutely.

21. It is relevant to notice that the prosecution has not claimed that the incident in question was witnessed by any one and no direct evidence regarding the incident is tendered before the Court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of

guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or, are, not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In Sharad v. State of Maharashtra, AIR 1984 SC 1622, after referring to earlier case-laws, the Supreme Court has summarised the conditions to be fulfilled in a case based on circumstantial evidence as under :-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established; (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of a conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and (vi) where the various links in a chain are in themselves complete, then a false plea or a false

defence may be called into aid only to lend assurance to the court. If the aforesaid various conditions are fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts, called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not and in dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, to human conduct and their relations to the facts of the particular case.

22. In the light of the abovereferred to principles, we will now consider the question whether the case against the appellant is proved or not.

23. The learned counsel for the appellant has vehemently submitted that the first information report lodged by the appellant was not admissible in evidence, and, yet, the learned Additional Sessions Judge had admitted it in evidence at Exh.107. The submission of the learned counsel for the appellant that the first information report lodged by the appellant and the statement made before the police officer is clearly hit by Section 25 of the Evidence Act, deserves to be accepted.

24. The Supreme Court considered the question of admissibility of first information report lodged by the accused and its admissibility in evidence in the case of Aghnoo Nagesia vs. State of Bihar, reported in AIR 1966 Supreme Court 119, has ruled as under:

"The first information report recorded under S.154, Criminal P.C. as such is not substantive evidence, but may be used to corroborate the informant under S.157 of

the Evidence Act or to contradict him under S.145 of the Act if the informant is called as a witness. Where the accused himself gives the first information, the fact of his giving the information is admissible against him as evidence of his conduct under S.8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under S.21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a police officer cannot be used against him in view of S.25 of the Evidence Act.

Where the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S.25 is lifted by S.27.

The test of severability namely, if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence, is misleading, and the entire confessional statement is hit by S.25 and save and except as provided by S.27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence."

In the case of B.A.Ramaiah v. State of A.P. reported in 1996 Criminal Law Journal 4463, the Supreme Court has observed in paragraph 16 as under:

"16. The legal position, therefore, is this: A statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an admission under section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession."

25. In view of the principles laid down by the Apex Court in the case of Aghnoo Nagesia (supra) and in the case of B.A. Ramaiah (supra), the First Information Report lodged by the appellant, which was admitted in evidence at Exh.107 by the learned Additional Sessions Judge, cannot be taken into consideration, as it is hit

by the provision of Section 25 of the Evidence Act, and cannot be used against the appellant.

26. The first circumstance which is sought to be proved by the prosecution against the appellant is that the appellant had purchased new house by paying consideration of Rs.1,75,000/- to his nephew, P.W.14, Arvindbhai Bhanjibhai. P.W.14, Arvindbhai Bhanjibhai, deposed that he was staying at Hudco quarters and was running a grocery shop. According to him, the appellant was his maternal uncle and he had sold his house situated at Kiran Society, Lane No.8, to the appellant for a consideration of Rs.1,75,000/out of which Rs.40,000/- had remained outstanding and that the appellant, along with his family members, was staying in the house purchased from this witness. He further deposed that the appellant had told him that the appellant wanted to sell this house as the wife of the appellant did not like it. In cross examination, P.W.14, Arvindbhai Bhanjibhai, deposed that, as the wife of the appellant did not like the present house, he had told the witness to find out some other house. He stated that it was decided by the appellant that after the present house was sold, he would buy another house. P.W.13, Maganbhai Narshibhai, who is brother of the appellant, was examined at Exh.103. He deposed that the appellant had purchased the present house prior to 10-12 months of the date of the incident at the price of Rs.1,75,000/- and Rs.40,000/- were still to be paid. this witness was not cross examined at the trial. P.W.7, Madhavji Kalabhai Umretiya, who was a fruit-vendor, was examined at Exh.80. He deposed that he was selling fruits in a lorry near Gayatri Vegetable Market whereas the appellant was selling bananas and, therefore, he knew him. As per this witness, the appellant was previously residing in the locality known as Ashapura and the appellant had told him that he wanted to purchase new house and had requested the witness for financial help. The witness deposed that he had assured that he would help the appellant and would manage to bring money from any source. He deposed that when it was decided by the appellant to purchase the present house situated in Kiran Society, the witness had given a loan of Rs.25,000/- to the appellant due to their friendly relationship. This witness was not cross examined by the learned advocate who represented the appellant at the trial.

27. From the oral evidence of the witnesses discussed above, coupled with with written reply of the appellant at Exh.109, it becomes evident that the appellant had purchased the present house situated in Kiran Society at

the price of Rs.1,75,000/- before ten months to one year of the incident from his nephew P.W.14, Arvindbhai Bhanjibhai. This circumstance, in our opinion, is proved beyond pale of doubt by the prosecution.

28. The second circumstance, on which the prosecution has tried to place reliance, is that the wife and his four daughters did not like the new house and were requesting the appellant to find out another accommodation in different locality. To prove this circumstance, the prosecution has placed reliance on the evidence of P.W.6, Bhavesh Tulsibhai, who was neighbour of the appellant. He deposed that, prior to purchase of the present house, the appellant was staying in the locality known as Ashapura and the family members of the appellant did not like to reside in the present house situated at Kiran Society. The witness was not cross examined on the aspect that the family members of the appellant did not like the present house. To prove this circumstance, the prosecution has placed reliance on the oral testimony of P.W.7, Madhavji Kalabhai. The witness deposed that the appellant had told him that his children did not like the present house and, therefore, he wanted to sell it. As stated earlier, this witness was not cross examined by the learned advocate who represented the appellant in the trial court. P.W.14, Arvindbhai Bhanjibhai, also deposed that the wife of the appellant did not like the present house and, therefore, he was trying to dispose it of and was trying to buy another house. The oral evidence of the witnesses as stated above proves beyond doubt that the appellant had purchased the present house but his family members, namely, his wife and daughters did not like to stay in the house and, therefore, they were requesting the appellant to find out another accommodation in another locality. The evidence of the above-named witnesses was not challenged by the appellant in the cross examination. Therefore, in our view, the prosecution has successfully proved the second circumstance against the appellant beyond reasonable doubt.

29. The third circumstances on which the prosecution has tried to rely against the appellant is that the appellant was not able to find out alternative accommodation as requested by his wife and daughters and, therefore, he was annoyed with them. To prove this circumstance, the prosecution has placed reliance on the oral testimony of P.W.7, Madhavji Kalabhai. This witness had deposed that, prior to a day of the incident, he had found the appellant standing with his hand-cart near Jubilee Market and that the appellant was under tension.

According to this witness, the appellant told him that he was just pulling on and was doing business of purchasing small quantity of bananas. The witness deposed that, on the very next day, he came to learn about the incident. The evidence of P.W.14, Arvindbhai Bhanjibhai, also proved that the appellant with great difficulty had purchased the present house whereas his family members were pressurizing him to sell it and to buy another house. Thus, evidence of witnesses proved beyond doubt that the appellant was under tremendous tension as he was not able to sell the present house and buy another house in different locality as per desire of his family members. The written reply submitted by the appellant at Exh.109 also indicates that, as his family members did not like the present house, he was trying to dispose it of. The evidence as discussed above, in our view. proves beyond pale of doubt that the appellant had purchased the present house with great financial constrains and had found it difficult to resist the request made by his wife and daughters to sell it and buy another house, and, therefore, he was annoyed with his wife and daughters for bringing pressure on him and putting him under tension. This circumstance on which the prosecution has placed reliance to prove guilt of the appellant is proved beyond reasonable doubt.

30. Another circumstance on which the prosecution has tried to rely against the appellant is that there was strong motive on the part of the appellant to commit murders of five female members. To prove this circumstance, the prosecution has placed reliance on the evidence of P.W.6, Bhavesh Tulsibhai, who has deposed that the family members of the appellant did not like to stay in the present house situated in Kiran Society. The evidence of P.W.7, Madhavji Kalabhai, also proves that he had rendered financial help to the appellant while lending an amount of Rs.25,000/- to purchase the new house. This witness and the appellant had become friends as both of them were selling fruits in their hand-lorries in the vegetable market at Rajkot. The appellant had told this witness that his children did not like the house and, therefore, he wanted to sell it. The oral evidence of P.W.14, Arvindbhai Bhanjibhai, who is nephew of the appellant, also proved that the wife of the appellant did not like the present house and, therefore, the appellant had decided to sell the said house. The appellant had purchased the present house from this witness for consideration of Rs.1,75,000/- out of which an amount of Rs.40,000/- remained to be paid by the appellant. The evidence of all three witnesses, namely, P.W.6, Bhavesh Tulsibhai, P.W.7, Madhavji Kalabhai and

P.W.14, Arvindbhai Bhanjibhai, proves beyond pale of doubt that the wife and family members of the appellant did not like to stay in the present house and the appellant was facing difficulties in solving problem of disposing of the present house and purchasing another house in other locality. It becomes evident from the oral testimonies of these witnesses that the appellant was in great confusion and under tension as he was not able to solve this problem. In our view, the appellant in order to get rid of this confusion had pre-planned to finish all his family members except the male child who was saved deliberately as he was kept at safer place while setting ablaze all female family members. In our view, the appellant wanted to get rid of female family members and he had strong motive to commit murders and to achieve unholy design, had pre-planned and had purchased five liters of petrol prior to the day of the incident and stored in the kitchen in plastic can. In our view, there was strong motive on the part of the appellant for committing murders of five female members of his family. Therefore, we do not accept the submission of the learned counsel for the appellant that the prosecution had failed to prove strong motive for committing murders.

31. Another circumstance which is sought to be relied upon by the prosecution against the appellant is that he had purchased petrol though he did not have any vehicle nor petrol was used as fuel in his house which indicated that the appellant had preplanned to set ablaze five female members of his family. To prove this circumstance, the prosecution has placed reliance on the oral testimony of P.W.12, Dilipbhai Virjibhai, Exh.102. He was working as Cashier in Jaynath Petrol Pump, Rajkot. This witness had turned hostile and deposed that he did not remember the person who had bought petrol at the petrol pump. The witness was cross examined by the learned Additional Public Prosecutor wherein he denied that he had stated before the police that the appellant had come with plastic can to the petrol pump around 8 p.m. prior to fifteen days of the recording of his statement by the police and had purchased five liters of petrol by paying Rs.142/-. In cross examination, he also denied that he had supplied five liters of petrol to the appellant. Though the witness during investigation stated before the Investigating Agency that the appellant had come to Jaynath Petrol Pump with plastic can and had purchased five liters of petrol by paying Rs.142 to the witness, at the trial he had turned hostile. If we take into consideration the written explanation tendered by the appellant at the time of his further statement recorded under Section 313 of the Code, he has admitted

that prior to the incident he was thinking to commit suicide and, therefore, had purchased petrol and had kept it in his house. Panchanama of place of incident admitted in evidence at Exh.82 coupled with oral evidence of panch witness, P.W.8, Chhelubha Shivubha, Exh.81, has proved that plastic can having small quantity of petrol was found at the place of the incident. In our view, panchanama of place of incident and the written explanation of the appellant tendered at Exh.109 at the time of recording his further statement prove beyond shadow of doubt that the appellant had purchased five liters of petrol though he did not require it as he was not having vehicle nor petrol was used as fuel in his house. In our view, this is the strong circumstance against the appellant which is proved by the prosecution.

32. Another circumstance on which the prosecution has sought reliance is that in the early morning hours of May 22, 1999, the appellant was in his house at 3 a.m. when all the female family members were sleeping on the ground floor in a room adjoining to the kitchen admeasuring 9 ft x 10 ft having no proper ventilation. To prove this circumstance against the appellant, the prosecution has heavily relied on oral testimony of P.W.6, Bhavesh Tulsibhai, who was staying in Kiran Society, Lane No.15/8. He deposed that the appellant was residing in the same society and his house was situated just opposite the house where the witness resided. He deposed that the appellant was staying with his wife, four daughters and one son and that the relations between family members of the appellant and his family members were cordial and they were visiting each others houses. The witness deposed that on the fateful night he was sleeping on the terrace of his house along with his mother and his sisters and around 3 a.m. he and his mother had woken up due to the fire in the house of the appellant. According to this witness, they had seen that the appellant was coming out of his house and was proceeding in the direction of Ashapura. He deposed that, when the appellant was coming out, shrill voices were coming from his house and a huge fire had taken place in the house of the appellant. The witness was cross examined but his version that the appellant was seen coming out of his house around 3 a.m. was not shaken. The witness deposed in cross examination that the appellant had come out by raising shouts. The mother of the witness, Kanchanben Tulsibhai, was examined as P.W.5 at Exh.78. She deposed that the appellant was residing just opposite her house with his family connsisting of the wife, four daughters and a son and, on the night of the incident, they were sleeping on the terrace and had woken up at 3 a.m. when

huge sound had come from the house of the appellant. She deposed that huge flames were coming out from the house of the appellant. The witness did not support the prosecution that she had seen the appellant coming out of the house after huge fire had taken place. P.W.5, Kanchanben, was declared hostile and was cross examined by the prosecution. In cross examination, she admitted that the Investigating Agency had recorded her statement on May 22, 1999 wherein she had stated that around 3 to 3.15 a.m. they had woken up due to huge fire in the house of the appellant and had seen that the appellant was coming out of his house raising shouts and was proceeding in the direction of Ashapura. Thus, the witness had admitted in her cross examination that the appellant was seen coming out of the house when fire had taken place in his house at around 3 a.m. The oral evidence of P.W.5 Kanchanben Tulsibhai and P.W.6 Bhavesh Tulsibhai gets corroboration from the written reply Exh.109 tendered by the appellant during recording of his further statement, wherein, he gave different version about fire having taken place in his house. It becomes evident that the appellant was present in his house around 3 a.m. on May 22, 1999 when the fire had taken place and he was seen coming out of the house as admitted by him and corroborated by the oral testimony of P.W.6, Bhavesh Tulsibhai. Other corroborative piece of evidence to prove that the appellant was present in the house at the time of the incident is that the appellant himself had sustained burn injuries on his left hand and face which proved beyond doubt that the appellant was present in his house when the fire had taken place. Evidence of P.W.9, Dr. K.D. Makwana, proves beyond doubt that he had examined the appellant on May 22, 1999 at 3.30 a.m. who had sustained burn injuries and was admitted in the burns ward of the Civil Hospital, at Rajkot. His evidence further established that the appellant had disclosed before P.W.9, Dr. Makwana, that he had sustained burn injuries at his house while he was preparing tea on a kerosene stove. The injury certificate of the appellant was produced by Dr. Makwana at Exh.96. From the above unimpeachable evidence led at the trial, in our opinion, the most incriminating circumstance that, at the time of the incident i.e. on May 22, 1999, the appellant was present in his house at 3 a.m. when the female members of his family were sleeping in the room on the ground floor, is proved beyond pale of doubt by the prosecution.

33. Another circumstance on which the prosecution has placed reliance against the appellant is that the appellant in the early morning hours of May 22, 1999 had

poured petrol in large quantity on the female members of the family when they were in deep sleep and had set them ablaze. To prove this circumstance, the prosecution has again placed reliance on the panchanama of the place of the incident Exh.82. P.W.8, Chhelubha Shivubha, who was the neighbour of the appellant, was examined at Exh.81. This witness had also acted as panch witness at the time of the drawing of the panchanama of the place of the incident. He deposed that he was sleeping at the time of the incident at his house when his neighbour, Narainbhai, woke him up around 3 a.m. Thereafter, according to him, the witness had gone to the house of the brother of the appellant. He saw that the house of the appellant was caught in a huge fire. He deposed that the personnel of the fire brigade had extinguished the fire and he had seen that the wife and four daughters of the appellant had died in the fire which had taken place in the house. The witness deposed that, in the house, one white plastic can was found from which smell of petrol was coming. He also deposed that one steel bowl was also found lying near the plastic can and smell of petrol was also coming from it. The witness was cross examined and during his cross examination he denied that the fire had taken place in the kitchen. However, he admitted that utensils and other articles kept in the kitchen had become black due to flames and smoke of the fire. In cross examination, he admitted that at the time of the drawing of panchanama it was noticed that steel bowl and plastic can containing petrol were placed in orderly condition in the kitchen. He deposed that smell of petrol was coming from bottom of the bowl. The evidence of this witness gets support from the panchanama of the place of the incident which was admitted in evidence at Exh.82. The appellant in his further statement had denied that he had poured petrol on his wife and four daughters and set them on fire. but, in his written explanation, he gave false version about the incident by stating that on the night of the incident he tried to commit suicide and had taken out petrol from the plastic can in a steel bowl and as he had become nervous and due to trembling of his legs, petrol filled in bowl got spilled on the floor. This explanation given by the appellant, in our opinion, is unacceptable, as huge fire had taken place due to sprinkling of petrol on five persons who were in deep sleep. The report of the FSL at Exh.41 proved beyond doubt that carbons of petrol were detected from the incriminating article recovered from the room at the time of drawing of the panchanama. The plastic can was filled with five liters of petrol and, after the incident, small quantity of petrol was found in the plastic can, as noted in the panchanama at Exh.82. There was no other person present in the house

who could have used petrol from the plastic-can. The appellant had used nearly five liters of petrol by poring it on five female members who were in deep sleep. The explanation of the appellant that he was trying to prepare tea and in that process due to flames of kerosene stove, fire had taken place cannot be accepted as no traces of fire having taken place in the kitchen were found, and no articles for preparation of tea or kerosene stove were found at the time of the drawing of the panchanama. In our view, the evidence of P.W.8, Chhelubha Shivubha, corroborated by the panchanama of the place of the incident Exh.82, fully establishes that the appellant had poured petrol on five female members of his family who were in deep sleep on early morning hours of May 22, 1999 and had set them ablaze. In our view, the prosecution has proved beyond pale of doubt the most incriminating circumstance that the appellant had poured petrol on five female members of his family, who were in deep sleep and set them on fire.

34. The other circumstance on which the prosecution has placed reliance is that after setting five female members ablaze, the appellant had made no attempt either to extinguish the fire himself or with the help of the neighbours or called fire brigade and instead had run away from his house leaving the victims in helpless condition. As noted earlier, P.W.6, Bhavesh Tulsibhai, had seen the appellant coming out of the house raising shouts and uttering some words. The witness had also deposed that he had heard shrill voices coming from the house of the appellant. The witness in terms deposed that the appellant after coming out of his house had gone in the direction of Ashapura. It may be stated that the brother of the appellant, namely, P.W.13, Maganbhai Narshibhai, was staying in the locality of Ashapura. The appellant had deliberately saved his male child by taking him to the terrace of the house. His preplanned strategy was to finish all female members of his family. After pouring petrol and setting ablaze, he had run away from the house. Witness, P.W.6, Bhavesh Tulsibhai, had deposed that he had gone to the house of one Dhirubhai and had called the fire brigade to extinguish the fire. He had also deposed that fire was so extensive that nothing was visible in the house of the appellant. P.W.6, Bhavesh Tulsibhai, was cross examined by the learned advocate for the appellant, but the evidence of the witness that, when the appellant was seen coming out of the house uttering some words, shirll voices were heard from the house of the appellant, was not dislodged. The witness had denied suggestion in cross examination that the extent of fire had increased after the appellant

had come out of the house. Thus, from the evidence of P.W.6, Bhavesh Tulsibhai, it is borne out that due to pouring of petrol, a huge fire had taken place all of a sudden and the appellant had also in that process sustained minor burn injuries on his left hand and face. The fact that the appellant had straightaway gone to the nearest Hudco police chowky and informed the duty constable, P.W.19, Police Constable, Pankajkumar Hiralal Dixit, that fire had taken place in his house and his family members were caught in fire and he should try to save them, also speaks volumes about the fact that the appellant had not tried to extinguish the fire or save the lives of five female members who were caught in huge fire. The written explanation of the appellant at Exh.109 also proves that the appellant after setting ablaze five female members had run away from his house and did not try to extinguish the fire himself or take help of his neighbours or take any help to call the fire brigade to extinguish fire and to save his family members. In our opinion, this vital circumstance against the appellant that, after setting five female members ablaze, the appellant had not tried to extinguish the fire himself nor taken the help of the neighbour and not tried to call the fire-brigade, is proved beyond shadow of doubt by the prosecution.

35 Another circumstance, on which the prosecution has placed reliance against the appellant is that after the incident he had run away from his house as if he had sustained serious burn injuries and got himself admitted in the Civil Hospital, Rajkot, where he had given different version of the incident to make out a case of accidental fire. To prove this circumstance, the prosecution had examined P.W.19, Police Constable, Pankajkumar Hiralal Dixit, who was serving at the Hudco police chowky on the day of the incident. He deposed that around 3.15 a.m. on May 22, 1999, one person had approached him in the police chowky in confused state of mind and told that when he was lighting a petrol lamp, fire had taken place in his house and that he should go to his house and save his wife and children. He deposed that the said person declared his name as Vashrambhai Narshibhai Rajpara [appellant]. The witness had deposed that he had at once conveyed message to Bhaktinagar police station through wireless-set. He deposed that as the appellant had sustained burn injuries, he had advised him to go to the Civil Hospital. The witness had deposed that he had sent the appellant in an auto-rickshaw to the Civil Hospital. The witness had deposed that thereafter immediately he had gone to the house of the appellant where he had seen that a huge fire had taken place and

many people had gathered near the house of the appellant. The witness had stated that in a few minutes fire brigade and ambulance van had arrived and the personnel of fire brigade had extinguished the fire. According to him, he had seen that the wife and four daughters of the appellant had succumbed to death due to the fire. The witness was searchingly cross examined by the learned advocate for the appellant. He denied in cross examination that the appellant had not stated before him that fire had taken place when he was lighting petrol lamp. He denied that the appellant had not gone to the Civil Hospital in the auto-rickshaw. He denied the suggestion put to him during his cross examination that the appellant had returned to his house along with the witness and was removed to the Civil Hospital in an ambulance van. The witness deposed that the fire had taken place inside the house and no external portion of the house was damaged due to the fire. The evidence of P.W.19, Police Constable, Pankajkumar Hiralal Dixit, in our view, was proved beyond doubt that the appellant, after setting ablaze five female members, had run away from the house leaving five female members in burning condition and had given wrong version of the incident to mislead one and all. The appellant while pouring petrol on five female members and setting them on fire had sustained some minor injuries and had tried to make out a show as if he had sustained serious burn injuries and got himself admitted in the Civil Hospital. The evidence of P.W.9, Dr. Makwana, supported by the injury certificate of the appellant Exh.96 indicates that the appellant had sustained burn injuries on his left hand and face at 10 to 15% and the injuries were such which would have healed up within 15 days if there were no complications. The evidence of P.W.9, Dr. Makwana and the injury certificate Exh.96 indicated that the injuries were not at all of serious nature, as can be seen from the fact that the appellant was able to run away from his house and approached the police constable on duty at Hudco police chowky. The fact that the appellant had himself gone to the Civil Hospital also suggests that he was fully conscious and was in a position to move around and had not sustained serious injuries. In our opinion, the appellant had deliberately run away from the place of the incident leaving five female members in helpless condition and got himself admitted in the Civil Hospital, Rajkot, by making out false version that he had sustained severe burn injuries. This conduct of the appellant, in our opinion, shows evil strategy in his mind to shield the real crime. In our opinion, on appreciation of oral evidence of P.W.9, Dr. Makwana, the injury certificate of the appellant Exh.96, oral testimony of P.W.19, Police

Constable, Pankajkumar Hiralal Dixit, the prosecution had successfully proved beyond pale of doubt that the appellant even though did not sustain serious injuries had run away from the place of the incident and got himself admitted in the Civil Hospital without taking care of dying female members of his family.

36. The prosecution has also relied upon circumstance against the appellant that he had narrated different false versions of the incident before P.W.9, Dr. K.D. Makwana at the Civil Hospital, P.W.19, Police Constable, Pankajkumar Hiralal Dixit and in his written explanation at Exh.109 tendered during recording of further statement to mislead the Investigating Agency and to shield his crime. To prove this circumstance, the prosecution has placed reliance on the oral testimony of P.W.19, Police Constable, Pankajkumar Hiralal Dixit who had deposed that the appellant had approached him at Hudco police chowky around 3.15 a.m. on May 22, 1999 and had told him that fire had taken place in his house while he was lighting a petrol lamp. The witness also deposed that the appellant was in confused state of mind and had sustained burn injuries and therefore he had advised him to go to the Civil Hospital. During the cross examination of this witness, his claim that the appellant had approached him and had disclosed that the fire had taken place while he was lighting a petrol lamp, has not been dislodged or shaken. The oral testimony of P.W.9, Dr. Makwana, indicated that when the appellant was admitted in the Civil Hospital, Rajkot, he had asked the appellant as to how he had sustained burn injuries and the appellant had told him that when he was preparing tea on kerosene stove at his house and due to flames of stove, he had sustained burn injuries. He deposed that thereafter he had sent his peon to call duty constable posted at the Civil Hospital as it was a medico-legal case. He deposed that thereafter, P.W.17, Police Head Constable, Chhaturbhai Dhanjibhai had noted down the history of incident in the register which was kept in the emergency ward of the hospital. As per the evidence of P.W.17, Police Head Constable, Chhaturbhai Dhanjibhai, the appellant had given history of the incident that, while he was preparing tea, he had sustained burn injuries. The said information was noted down in the register kept at the Civil Hospital and was conveyed by P.W.17, Police Head Constable, Chhaturbhai Dhanjibhai, to Bhaktinagar police station. The evidence of P.w.9, Dr. Makwana and P.W.17, Police Head Constable, Chhaturbhai Dhanjibhai, proved beyond doubt that the appellant had come out with different versions of the incident of the fire to shield his crime and to mislead the Investigating Agency.

37. The prosecution in this case has examined P.W.1, Dr. Bharatbhai Pranshanker Dholakiya, who performed the post-mortem of the deceased Savitaben (wife of the appellant), Rajuben and Harshidaben (daughters of the appellant). The post-mortem reports of above three bodies were admitted in evidence with the consent of the learned advocate for the appellant. The prosecution has examined P.W.2, Dr. Jayant Harilal Joshi, who performed post-mortem of Ushaben and Guddiben. All the post-mortem reports of five females were admitted in evidence with the consent of the learned advocate for the appellant. The evidence of both Doctors who performed post-mortem on five dead bodies indicated that the burn injuries found on all the dead bodies were of 100% and of two to three degrees. Viscera of five dead bodies were sent for chemical examination to the Forensic Science Laboratory. The report of the Forensic Science Laboratory indicated that cause of death of all five persons was shock due to extensive burns of the body.

38. As per the post-mortem notes, injuries found on five dead bodies by the two Doctors, namely, P.W.1, Dr. Bharatbhai Pranshanker Dholakiya and P.W.2, Dr. Jayant Harilal Joshi, are as under:

(1) Post-mortem report of Savitaben, wife of Vashrambhai (Exh.7):

- Limbs are pugulistic attitude.

- Both upper limbs are slightly abdycted at shoulders and semiflexed at elbowes. both lower libs are semiflexed at hips and knees.

- Dermo. epidermal burns on scalp, face, neck, front and back of trunk and on perinium and left lower limb. Deep burns involving muscles on right thing and deep burns upto bone on right leg and foot. Peeling of channel skin at many palces with redness underneath.
- Brain and meninges congested
- Dermo epidrmal burns on chest wall
- Carbon particles seen in Troches
- Filled with clotted blood on right side left side empty

(2) Post-mortem report of Rajuben, daughter of Vashrambhai (Exh.9):

Limbs are pugulistic attitude.

Dermo. epidermal burns on scalp, face, neck, front and back of trunk and on perinium and on both upper limbs.
- deep burn on both upper limbs invovling muscles also on the lower limbs nicluding feet.
- Peeling of chaved skin at many palces, with redness underneath.
- Brain and meninges congested
- Dermo epidrmal burns on chest wall
- Carbon particles seen in Troches
- Clotted blood right side left side empty

(3) Post-mortem report of Harshidaben, daughter of Vashrambhai (Exh.11):

Limbs are pugulistic attitude.

Dermo. epidermal burns on scalp, face, neck, front and back of trunk and on perinium
- deep burn seen on both upper limbs invovging muscles.
- deep burns seen on both lower limbs including feet, involving muscles, peeling of chaved skin at many places with redness underneath
- Brain and meninges congested
- Dermo epidrmal burns on chest wall
- Carbon particles seen in Troches
- Clotted blood right side left side empty

(4) Post-mortem report of Ushaben, daughter of Vashrambhai (Exh.14):

Limbs are pugulistic attitude.

- Burnt areas: Face, neck, front & chest & abdomen, both upper limbs, both lower limbs, whole back, perimium, soles of feet.

- Burnt areas show peeling of skin with redness - Brain and meninges congested
- Carbon particles seen in Troches
- Congested piece of lung sent for C.A.
- Empty no smell. M.M. not congested. Stomach sent for C.A.
- Congested piece of liver sent for C.A.
- Congested piece of spleen sent for C.A.
- Congested piece of kidney sent for C.A.
Clotted blood right side left side empty

(5) Post-mortem report of Guddiben, daughter of Vashrambhai

- Limbs are pugulistic attitude.
- 2nd and 3rd degree whole body burned
Burnt areas: Face, neck, front & chest & abdomen, both upper limbs, both lower limbs, sole of feet,
- Burnt areas show peeling of skin with redness -
Brain and meninges congested
- Carbon particles seen in Trochea
- Heart right side filled - lift side empty
- Congested piece of lung sent for C.A.
- Empty no smell. M.M. not congested. Stomach sent for C.A.
- Congested piece of liver sent for C.A.
- Congested piece of spleen sent for C.A.
- Congested piece of kidney sent for C.A.
Clotted blood right side left side empty

When the case was sent back to the trial court for recording further evidence of the witnesses and re-examination of the two Doctors, who performed post-mortem on five dead bodies, the learned counsel for the appellant had cross examined the Doctors. In cross examination, the learned counsel for the appellant had put questions to the Doctors that burn injuries found on the dead bodies were post-mortem and not ante-mortem. The tenor of cross examination of the two Doctors was that all the five persons first died an accidental death due to electric short-circuit and thereafter due to fire which had taken place in the house, they had sustained burn injuries. Thus, the defence during cross examination of two Doctors had put forward a theory that all the five persons had died due to burn injuries received as a result of the accident and not homicidal death. P.W.1, Dr. Dholakiya and P.W.2, Dr. Joshi, in their cross examination, have categorically stated that burn injuries found on all the five dead bodies were ante-mortem. They negatived the theory that burn injuries found on the dead bodies were post-mortem. The two Doctors did not specifically depose that the deceased died a homicidal death, but they had deposed that the burn injuries sustained by all five persons were sufficient in the ordinary course of nature to cause death.

39. People sometimes produce burns on a dead body to support a false charge of murder, and at other times the police remove a dead body while in the act of burning on a cremating pyre to send to the medical officer for

post-mortem examination, when they suspect that the body is being hurriedly cremated to conceal cause and act of murder. In both cases, the medical officer should be prepared to tell the difference between ante-mortem and post-mortem burns. In the searching cross-examination of two Doctors, they have categorically deposed that the burn injuries found on the dead bodies were ante-mortem. In our view, the theory of fire having taken place due to short-circuit is clearly ruled out from the circumstances established during the course of trial. In the case of Mulakh Raj and others vs. Satish Kumar and others, reported in 1992 Supreme Court Cases (Cri) 482, the husband had first strangulated the wife and thereafter burnt her dead body to destroy evidence. The post-mortem examination and symptoms found on the dead body by the Doctor revealed that the death was due to constriction or pressure on the neck (asphyxia). The Supreme Court, in order to find out the distinction between ante-mortem and post-mortem injuries, in paragraph 13, at page 490, after appreciating the evidence of the Doctor who had performed post-mortem and books of renowned Authors in respect of Medical Jurisprudence, has ruled as under:

"13. Regarding the distinction between ante-mortem and post-mortem burns, he pointed out the lines of redness, of vesication and reparative processes as distinctive features. He elaborated the same later. A reading of it gives the distinction and would be concluded thus:
(1) Ante-mortem burn injuries are characterised by the presence of burnt carbon particles (soot) in the trachea which is absent in the case of post-mortem burn injuries.
(2) Charbodyhaemoglobin is present in the heart blood in ante-mortem burning which is absent in case of post-mortem burning.
(3) Ante-mortem burns are usually red owning to the tendency of the system to rush blood towards the injured parts of repairs, which is distinctly different from post-mortem burns which are hard and yellowish in colour.
(4) Blisters are prominently present in ante-mortem burns. Some blisters may appear in post-mortem burns, but they are distinctly different from ante-mortem burns, where blisters are full of protein rich fluid that contains a substantial amount of white cells, caused by the tendency of the system to rush in white cells to fight against infection. The presence of protein is so high that it becomes solid on heating. Post-mortem blisters hardly contain any protein in their fluid and whatever fluid is contained has so little protein that on heating only a faint opalescence is seen. The fluid in post-mortem blisters does not contain any while blood

cells.
(5) In antemortem burns, reparative enzymes are present in the vicinity of burnt areas as the reparative enzymes would try to repair the burnt areas. Their presence could also be used for predicting the time since the person was burnt. Various enzymes appear at the following time:
(a) Enzyme esterase - 30 minutes. (b) Leucine aminopeptidase - 2 hours approx. (c) Acid Phosphatase 3 hours approx. (d) Alkaline Phosphatase - 5 hours. Reparative enzymes are not detected in post-mortem burns.
(6) Signs of infection in a burn injury only lead to conclusion that the burn injury is ante-mortem in nature as there cannot be infection in a post-mortem burn injury, only putrefaction. Since infection occurs roughly 36 hours after the burn, one can easily predict the time since the burn injuries occurred."

Applying the principles laid down by the Supreme Court to the facts of the present case, we notice that P.W.1, Dr. Dholakia and P.W. 2 Dr. Joshi who performed post-mortem on the five dead bodies found that there were muscle deep burn injuries of 100% of 2 degree to 3 degree on each body and, at some places, there was peeling of skin with redness underneath. On internal examination of dead bodies, the Doctors found in all five dead bodies that carbon particles were seen in trachea. Right side of heart was clotted with blood whereas left side was empty. The brain and lungs were congested. External and internal injuries mentioned in the post-mortem reports indicated that burn injuries sustained by five persons were ante-mortem and not post-mortem. An attempt was made during cross examination of the Doctors that they had not observed burn injuries meticulously, but, by that suggestion, it cannot be concluded that the injuries noticed by the Doctors on the dead bodies were not ante-mortem but post-mortem. External and internal injuries noticed by P.W.1, Dr. Dholakiya and P.W.2, Dr. Joshi, which have been mentioned in post-mortem notes, prove beyond doubt that the burn injuries found on five dead bodies were ante-mortem. The evidence of the Doctors, who performed post-mortem, in our view, leaves no room for doubt that five female members had sustained ante-mortem burn injuries.

40. In the case of State of Kerala vs. Mani alias Chandran (supra),the Division Bench of the Kerala High Court had an occasion to deal with the question when a Doctor conducting autopsy was not in a position to give definite opinion regarding cause of death. The Division Bench, while dealing with the above question, ruled that

a doctor, who conducts autopsy, has only the dead body before him. Some times it may be difficult for the doctor to finally pronounce as to how the deceased died. If he expresses such inability, it does not mean that the court, on that score, becomes helpless. Cases have been reported in which either dead body was not traced out at all, or dead body had been cremated without conducting autopsy or skeleton alone was available for post-mortem examination. The Sessions Courts were not helpless in such cases and in many such cases courts were able to conclude regarding cause of death in spite of absence of positive medical evidence. In Anand Lagu v. State of Bombay, reported in AIR 1960 SC 500, without positive medical evidence as to how the deceased died and even without a report of chemical analyst suggesting any symptom of poison in the system, the Supreme Court concluded, from other circumstances, that the deceased in that case had died due to poisoning which was a homicidal death.

41. All the family members of the appellant and the appellant himself were in the house on the fateful night. The appellant and his male child, aged about five years, were sleeping on the terrace, whereas the wife of the appellant along with four daughters were sleeping in the room admeasuring 9 ft x 10 ft which had no proper ventilation. The evidence of P.W.6, Bhavesh Tulsibhai who is a neighbour disclosed that on the fateful night at around 3 a.m. when he was sleeping on the terrace, he had heard huge noise and he had at once got up and seen the appellant coming out of his house and going towards Ashapura. He deposed that, when the appellant was coming out, shrill voices were coming from the house of the appellant. He deposed that a huge fire had taken place in the house of the appellant. He deposed in cross examination that the appellant had come out of his house raising cries but he could not make out what words were uttered by the appellant. His evidence disclosed that he had gone to the house of neighbour, Dhirubhai from where he had called the fire brigade. P.W.5, Kanchanben Tulsibhai, mother of witness Bhavesh, admitted, in her evidence, that on the night of the incident, she and her son P.W.6 Bhavesh were sleeping on the terrace and she was woken up at around 3 a.m. because a huge fire had taken place in the house of the appellant. She deposed that huge flames of fire were coming out from the house of the appellant. However, the witness did not support the case of the prosecution in her examination in chief that she had seen the appellant coming out of his house when fire had taken place. The learned Additional Public Prosecutor, who appeared at trial, had declared this

witness hostile and had cross examined her. In cross examination, she admitted that in her statement before the police she had stated that she had seen that the appellant was coming out of his house. Therefore, her evidence supports that on the fateful night, she and her son Bhavesh were sleeping on the terrace of the adjoining house and a huge fire had taken place in the house of the appellant and the appellant was seen coming out of his house. P.W.8, Chhelubha Shivubha, was examined by the prosecution as witness who was also a neighbour of the appellant. The witness deposed that, when he reached the house of the appellant, he had seen that the wife and four daughters of the appellant were burnt alive due to fire. He deposed that, when the panchanama of the scene of the offence was drawn, white plastic can and a steel bowl were found from the room where fire had taken place and from plastic can and steel bowl, smell of petrol was coming. He deposed that all the articles, i.e. wooden cot, pillows, quilt, etc. in the room were found in burnt condition. The panchanama of the scene of offence was proved by this witness and was admitted in evidence at Exh.82. In cross examination, the witness deposed that small quantity of petrol was found in the plastic can which was lying in the room.

42. The panchanama of the scene of offence Exh.82, showed that fire had taken place in the room adjoining the kitchen, which was of 9 ft x 10 ft. In the room, one iron cot was found towards eastern wall. A TV set was found in north-east corner of the room which was totally burnt. Quilts were found in half-burnt condition. A wooden cot was also found in burnt condition. Long black hair were found in the room, which were also in burnt condition. The panchanama further indicated that on eastern direction behind the house, there was a house of Narainbhai Bhikhabhai Gajipara.

43. The prosecution has examined neighbour, Narainbhai Bhikhabhai Gajipara, P.W.18,Exh.134. He has deposed that the house of the appellant was just adjoining his house. He deposed that, prior to 11 months of his deposition, when he was sleeping on the terrace of his house, there was a huge blast in the house of the appellant around 3.30 a.m. and on hearing the sound of blast, he had come down to enquire from which direction the sound had come. Thereafter, he had gone to terrace of his house and found that huge flames were coming out from the house of the appellant. He deposed that, therefore, he had come down from the terrace and went to the house of the appellant and found that all the doors of the house were open. His evidence shows that he had

gone to the house of P.W.8, Chhelubha Shivubhai. He found that Chhelubha had already gone to the place of the incident and, therefore, he had gone to the house of the brother of the appellant, Maganbhai, who was staying in Ashapura locality. It must be borne in mind that, according to witness, Bhavesh, P.W.6, he had seen the appellant coming out of the house and going in the direction of Ashapura. This indicates that, after the fire had taken place, the appellant had gone straightaway towards the house of his brother at Ashapura. Witness Narainbhai, P.W. 18, Exh. 134 deposed that the son of the appellant aged about 5 years was removed by the brother of the appellant, Maganbhai, to his house at Ashapura. The witness has deposed that, after the personnel of fire brigade had extinguished the fire, they had gone inside the house and found that five persons were burnt alive. The witness has deposed that he had brought bed-sheet (chaddar) and quilts from his own house and handed over them to the personnel of fire brigade to wrap five dead bodies. He deposed that, during this period, he had not seen the appellant near the house. The witness, in cross examination, denied that the fire had taken place due to electrical short-circuit. In cross examination, the witness had also deposed that, after the fire was extinguished, he had seen one dead body in sleeping condition on a cot whereas four dead bodies were found on the floor in sleeping condition.

44. It may be mentioned that the defence version regarding fire having taken place due to electric short-circuit is merely an after thought. A suggestion made to P.W.18, Narainbhai Bhikhabhai Gajipara, that the fire had taken place due to electric short-circuit, was specifically denied by the said witness. In our view, the theory of defence that the fire had taken place due to short-circuit cannot be accepted. If there was electric short-circuit, fire would have spread to the remaining portion of the house. The panchanama of place of incident Exh.82 does not indicate that the fire had taken place in the kitchen or in the front portion of the house. If the fire had taken place due to electric short-circuit, it would have spread over to the entire house and even to the adjoining houses where electricity line was passing. It was sought to be argued by the learned counsel for the appellant that as there was blast of picture tube of TV, it indicated that the fire had taken place due to electric short-circuit. In our view, the submission deserves to be rejected. As noted earlier, almost five liters of petrol was poured or sprinkled on five deceased female members who were in

deep sleep. Due to setting them on fire, there would be a huge blast wherein TV would also be destroyed. Due to heavy fire taking place in a small room, picture tube of the TV would certainly get blasted. Therefore, it cannot be said that, due to electric short-circuit, picture tube of TV got blasted. Once the theory of accidental fire having taken place due to electric short-circuit is ruled out, and the explanation of the appellant is found to be unacceptable, there cannot be any other cause of death of five persons other than homicidal. It may also be mentioned that the appellant in his explanation had never come out with the case that due to electric short-circuit the fire had taken place. If death occurs in suspicious circumstance, reasonable explanation was expected from the appellant. The appellant had given different explanations about occurrence of the incident before P.W.9, Dr. K.D. Makwana, and the police officers who were present at Hudco police chowky and at the Civil Hospital, Rajkot, whereas in the written explanation tendered at Exh.109 at the time of recording of further statement, the appellant had come out with false explanation that as he had become nervous due to trembling of legs, petrol filled in the bowl had spilled on the floor and at the time of preparing tea on kerosene stove, due to flames of the stove, fire had taken place. In our view, none of the explanations offered by the appellant nor the defence as suggested by the learned counsel for the appellant at the time of cross examination of some of the witnesses can be accepted. There cannot be any manner of doubt that five deceased persons had died due to sprinkling or pouring of petrol by the appellant of a large quantity when they were in deep sleep and the appellant had set them ablaze by lighting a match stick. As held earlier, all the five deceased persons had died due to ante-mortem burns. In an unnatural death, once the conclusion is reached that the accident and suicide both are excluded beyond reasonable doubt, then the only conclusion is that deaths of five members were homicidal. The fact that traces of petrol were detected in the report of FSL Exh.41 also strengthens the case of the prosecution that five female members were set ablaze by pouring petrol upon them by the appellant. The post-mortem notes and the inquest panchanama at Exh.23 also proved beyond doubt that five persons had died in their sleep when the appellant had poured petrol and set them ablaze. The fact that five dead bodies were found in pugilistic attitude also suggested that they succumbed to injuries in sleeping condition. The condition of their hands and legs which were in flexed position i.e. in pugilistic attitude also supports the case of the prosecution that all the five

persons had succumbed to burn injuries while they were sleeping. In our view, there cannot be any manner of doubt that all the female members of the family of the appellant had died due to homicidal death. Therefore, this circumstance also stands proved against the appellant.

45. From the evidence, as discussed above, the prosecution has proved following circumstances beyond reasonable doubt:

(1) The appellant had purchased new house situated at Kiran Society at the price of Rs.1,75,000/- prior to ten months to one year of the date of the incident from his nephew, P.W.14, Arvind Bhanjibhai, and had not paid the full price of the house to his nephew and Rs.40,000/remained as outstanding amount towards the full price of the house. It is also proved that the appellant had taken loan of Rs.25,000/- from P.W.7, Madhavji Kalabhai.

(2) The wife and four daughters of the appellant did not like the new house and requested the appellant to find out another accommodation in other locality.

(3) The appellant was not able to find out alternative accommodation as requested by his wife and daughters and, therefore, he was annoyed with them.

(4) There was strong motive on the part of the appellant to commit murders of five female members.

(5) The appellant had purchased five liters of petrol though he did not have any vehicle nor petrol was used as fuel in his house.

(6) In the early morning hours of May 22, 1999, the appellant was present in his house at 3 a.m. when all the female family members were sleeping on the ground floor in a room adjoining to the kitchen admeasuring 9 ft x 10 ft.

(7) The appellant in the early morning hours of May 22, 1999, had poured petrol in large quantity on the female members of the family when they were in deep sleep and set them ablaze.

(8) The appellant after setting ablaze five female members had made no attempt either to extinguish the fire himself or with the help of the neighbours or called the fire brigade and instead had run away from his house

leaving the victims in helpless condition.

(9) The appellant, after the incident, had run away from his house as if he had sustained serious burn injuries and got himself admitted in the Civil Hospital, Rajkot, where, he had given different versions of the incident to make the theory of accidental fire.

(10) The appellant had narrated different false versions of the incident before P.W.9, Dr.K.D. Makwana at the Civil Hospital, P.W.19, Police Constable, Pankajkumar Hiralal Dixit and in his written explanation at Exh.109 tendered during the recording of further statement to mislead the Investigating Agency and to shield his crime. The conduct of the appellant to misguide the real occurrence of the incident by giving false and different versions also shows his guilty conduct. This conduct of the appellant is clearly admissible under Section 8 of the Indian Evidence Act, as part of res-gestae as evidence of conduct immediately after the occurrence.

46. False plea is a relevant circumstance which militates against innocence of the appellant. Unnatural conduct of the appellant immediately after the occurrence and false plea of having bought petrol to commit suicide and another false plea that, when he was preparing tea on a primus, due to bursting of primus, fire had taken place, are telling materials and relevant circumstances, which would complete the chain of circumstantial evidence leading to only one conclusion that the appellant had committed ghastly offence of murder of his wife and four daughters. When the wife and four daughters were practically charred to death, innocent and compassionate husband would be in a shock and would not move from the house where five persons were in the process of being burnt alive and yelling for help.

47. After the house of the appellant was engulfed in the huge fire and after he had sustained minor burn injuries, he was seen coming out of the house around 3 a.m. on May 22, 1999 leaving the wife and four daughters in helpless condition and when it was found that all the five females had died due to burn injuries and when the appellant had offered explanation about fire having taken place due to accident, which is found to be untrue, then, in such a case, there cannot be any hesitation to come to the conclusion that it is the appellant who is the perpetrator of the crime. In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation

or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This proposition fully applies to the circumstances of the present case. On the circumstances enumerated above which have been established by the prosecution beyond pale of doubt, we have no hesitation to come to the conclusion that the charge of murder has been proved beyond reasonable doubt against the appellant.

48. The above enumerated circumstances were established by the prosecution beyond reasonable doubt which form a complete chain so as to bring home the guilt of the accused without giving room to any other hypothesis except the guilt of the accused and those circumstances are inconsistent with the innocence of the accused and, in our view, fully establish the guilt of the accused of having committed gruesome murder of his wife and four daughters. We, therefore, confirm the conviction of the appellant recorded by the learned Additional Sessions Judge under Section 302 of the Indian Penal Code.

49. Before deciding the quantum of punishment to be imposed on the appellant, one argument advanced by the learned counsel for the appellant requires to be dealt with at this juncture. As per the submission of the learned counsel for the appellant, Section 235(2) of the Code provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistent with the policy underlined in Section 354(3), a bearing on the choice of sentence. In the submission of the learned counsel for the appellant, while making the choice of sentence for various offences including one under Section 302 of Indian Penal Code, the Court should not confine its consideration principally or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal. The learned counsel for the appellant submitted that the learned Additional Sessions Judge, without hearing the appellant under Section 235 of the Code, had not given ample opportunity to him to put before the Court the evidence with regard to his mental status. It is submitted that the appellant had at the pre-sentence hearing stage, requested the trial Court that he had lost all the medical case papers of the treatment which he had received from the Phychiatric in the fire which had taken

place at his house and, therefore, requested the trial Court to refer him to assess his mental status in Jamnagar Mental Hospital. It is submitted by the learned counsel for the appellant that the learned Additional Sessions Judge had turned down the request of the appellant which has resulted into great prejudice to the appellant and, therefore, the death sentence imposed on the appellant is against the provisions of Section 235(2) read with Section 354(3) of the Code.

50. It may be mentioned that the learned Additional Sessions Judge, Rajkot, had pronounced the order of conviction against the appellant on March 29, 2000 and had ordered that the appellant be heard on the question of sentence. On the same day, the appellant had filed an application Exh.113 praying for adjournment. The said application was granted by the learned Additional Sessions Judge and the case was adjourned to March 30, 2000 for hearing the appellant on the question of sentence. On March 30, 2000, the learned advocate for the appellant tendered application Exh.114 mentioning therein that the appellant wanted to produce evidence with regard to his mental condition and, therefore, the case be adjourned. The learned Additional Public Prosecutor had seriously objected to grant of adjournment. However, the learned Additional Sessions Judge had granted adjournment and the case was adjourned to March 31, 2000. On March 31, 2000,. the appellant tendered an application that he had previously taken treatment for his mental disease from Dr. Kakkad and Dr. Arvindbhai but the said Doctors had expired and all the medical case papers and prescription of the said Doctors were destroyed in fire which had taken place in his house and, therefore, he should be referred to Jamnagar Mental Hospital for assessing his mental status. It was also prayed that, in case of necessity, he would examine the Doctor of Jamnagar Mental Hospital in his defence. The said application was kept for hearing on April 1, 2000 by the learned Additional Sessions Judge by order dated March 31, 2000. The above application was heard by the learned Additional Sessions Judge on April 1, 2001 and, by a speaking order, the learned Additional Sessions Judge had rejected the said application on the same day. In the said order, the learned Additional Sessions Judge observed that the appellant, during his further statement, had never mentioned about his mental condition and that he had never taken defence of legal insanity and his mental status was found to be normal and just to prolong imposition of sentence, the appellant was filing application after application and was wasting time of the Court. The learned advocate for the appellant in the

trial court filed application Exh.116 stating that the appellant wanted to challenge the order dated April 1, 2000 passed by the learned Additional Sessions Judge in the higher forum and, therefore, the case be adjourned for 20 days. The said application was opposed by the learned Additional Public Prosecutor. However, the learned Additional Sessions Judge, by his order dated April 1, 2000, granted time upto April 7, 2000 to the appellant to approach the higher forum. Against the order dated April 1, 2000 passed by the learned Additional Sessions Judge, below application Exh.115, the appellant filed Criminal Revision Application No. 161 of 2000 in this Court which was dismissed by the High Court (Coram: Y.B. Bhatt, J.), by order dated May 4, 2000. The order dated May 4, 2000 reads as under:

"1. This is a revision application under section 397 read with section 401 of the Criminal Procedure Code at the instance of the original accused against whom conviction under section 302 of IPC has been recorded by the Sessions Court, and the matter is pending hearing for the purpose of imposition of sentence. At this stage the accused gave an application stating that he is of unsound mind and therefore he is required to be examined by qualified specialist from Jamnagar Mental Hospital and hence he should be referred to the said hospital for the said purpose.
2. The Sessions Court heard the learned counsel for the respective parties in the said application, and for cogent and valid reasons rejected the same. It is the rejection of this applciation which is the subject matter of the present revision.
3. Firstly, this application is not maintainable under section 397(2) of the Criminal Procedure Code, and even otherwise I am satisfied that the application has been made by the accused only for the purpose of causing delay. I see no substance in the present revision and the same is, therefore, dismissed."

The appellant had filed Misc. Criminal Application No.418 of 2000 before the learned Sessions Judge, Rajkot, under Section 408 of the Code seeking transfer of the case from the Court of the learned Additional Sessions Judge, Rajkot, as according to the appellant he was not afforded sufficient opportunity to defend his case. Along with the application for transfer, the application to stay further proceedings was also filed, on which, the learned Sessions Judge had passed following interim order:

"Heard. In the interest of justice, further proceedings

be stayed in Sessions Case No.123 of 1999. Yadi to the Court of the learned Additional Sessions Judge, Rajkot, where the case is pending."

The learned Sessions Judge, Rajkot, by his order dated May 12, 2000, rejected the application for transfer filed by the appellant by holding that ample opportunity was given to the appellant to defend his case and no illegality was committed by the learned Additional Sessions Judge in conducting the trial. The record of Misc. Criminal Application No.418 of 2000 indicates that the learned advocate for the appellant filed an application on May 12, 2000 before the learned Sessions Judge, Rajkot, as the appellant was desirous of challenging the order dated May 12, 2000, praying to stay further proceedings of Sessions Case No.123 of 1999 for a period of 30 days to enable him to approach the High Court. The learned Sessions Judge, by order dated May 12, 2000, stayed further proceedings of Sessions Case No.123 of 1999 till May 29, 2000, but the appellant failed to obtain any order in his favour from the higher forum.

51. The above-stated facts clearly indicate that the appellant had simultaneously filed two proceedings one before the learned Sessions Judge, Rajkot, in Misc. Criminal Application No. 418 of 2000 under Section 408 of the Code for transfer of Sessions Case No.123 of 1999 to some other court, and another before the High Court by filing Criminal Revision Application No.161 of 2000. The appellant did not point out before the High Court or the Sessions Court that he had resorted to two different proceedings. The conduct of the appellant manifestly establishes that in the guise of seeking opportunity to lead evidence about his mental status, in fact, he wanted to prolong the hearing on the question of sentence by the learned Additional Sessions Judge.

52. In the case of Santa Singh vs. State of Punjab, reported in AIR 1976 SC 2386, the Supreme Court has recognized the principle that the Judge should give the party or parties concerned an opportunity of producing evidence or material relating to the various factors bearing on the question of sentence, but, the Supreme Court has observed that, "care would have to be taken by the Court to see that this hearing on the question of sentence is not turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings."

53. Narration of the facts, as noted in the foregoing paragraphs, demonstrates that the appellant had taken resort in the guise of producing material and evidence with regard to his mental status at the pre-sentence stage and had tried to protract imposition of the sentence of extreme penalty, which was to be imposed on him for the barbaric and brutal murder of five female members of his family. The appellant had adopted all the tactics to protract the proceedings. During the course of the trial, the appellant had not taken any defence of legal insanity. The way in which the pre-planned and cold-blooded murders of the female family members were committed by the appellant by cleverly saving the life of the male child clearly establishes that the appellant did not suffer from any mental disability nor does it demonstrate that the appellant was having imbalanced mind and had acted on the account of mental anguish. The safeguard under Section 235 (2) of the Code cannot be resorted to take disadvantage of the situation with a view to protract the sentencing process. The appellant had gone to the extent that the Sessions Case No.123 of 1999 should be transferred to some other Court, so that he can avoid extreme death penalty. In our view, looking to the conduct of the appellant, and heinous crime he had committed in a pre-planned and cold-blooded manner, the learned Additional Sessions Judge was ultimately justified in rejecting the application filed by the appellant and his learned advocate to delay imposition of sentence in the guise of producing material and evidence with regard to mental status. In our view, the learned Additional Sessions Judge had granted sufficient opportunity of hearing to the appellant before imposing the extreme penalty of death sentence, but the appellant had taken undue advantage of it and tried to scuttle the sentencing process. It is required to be stated that the learned Additional Sessions Judge had recorded conviction on March 29, 2000 and the sentence of death could only be imposed on May 31, 2000, because of delaying tactics adopted by the appellant and his learned advocate. Therefore, we do to find any merit in the submission of the learned counsel for the appellant that, at the pre-sentence stage, no proper opportunity was afforded to the appellant to produce evidence with regard to mental status by rejecting the appellant's request to refer him to the Mental Hospital at Jamnagar.

54. In Bachan Singh vs. State of Punjab, reported in AIR 1980 Supreme Court 898, the Constitution Bench of the Supreme Court has laid down the principles that under which circumstances extreme penalty of death can be imposed and mitigating and aggravating circumstances

should be borne in mind while imposing extreme penalty. In paragraph 197, the Supreme Court ruled as under:

"197. Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. In Jagmohan, it was reiterated by this Court that if a murder is 'diabolically conceived and cruelly executed', it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by V.R. Krishna Iyer, J., speaking for the Bench, in Ediga Anamma, in these terms:
'The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence' ".
In paragraph 199, the Supreme Court has ruled as under:
"199. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist."

While imposing sentence of extreme penalty, the Court is required to give special reasons as provided under Section 354(3) of the Code indicating why it was imposing extreme penalty of death. While imposing death sentence, the Court is also required to take into consideration mitigating circumstances as well as aggravating circumstances against the criminal. In the exercise of its discretion, the Court shall take into account the following circumstances.
(1) That the offence was committed under the

influence of extreme mental or emotional disturbances.
(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
(6) That the accused acted under the duress or domination of another person.
(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

The Court may, however, in the following cases, impose penalty of death in its discretion if it finds that the following aggravating circumstances were established.
(1) The murder was premeditated and occurred in the course of a felony (burglary);
(2) the defendant had the propensity to commit murder;
(3) the murder was especially heinous, atrocious and cruel; and
(4) the defendant knowingly, through his intentional act, had created a great risk of serious bodily harm and death to many persons."

55. In regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in the Indian Penal Code, the Scheme of the Code is, it confers a wide discretion on the Court in the matter of awarding appropriate punishment by prescribing the maximum punishment and in some cases both the maximum as well as the minimum punishment for the offence. Though no general guidelines are laid down in the Code for the purpose of awarding punishment, generally the judicial discretion of the Court is guided by the principle that the punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-a-vis an accused in each case. The obligation of the Court in making the choice of death sentence for the person who is found guilty of murder is onerous indeed. But by sentencing a person to death, the Court is giving effect to the command of law

which is in public interest whereas in committing the murder or being privy to commit murder, even if it be a vengeance for another murder, the convict is violating the law which is against public interest. However, on the question of awarding the sentence for the offences for which life imprisonment as well as the death sentence is prescribed, sub-section (3) of Section 354 of Code of Criminal Procedure enjoins that in the case of sentence of death, special reasons for such sentence shall be recorded.

56. Death sentence remains in the statute book and its constitutional validity has been approved by the Constitution Bench in the celebrated decision of Bachan Singh vs. State of Punjab (supra). The Constitution Bench while upholding the validity of death sentence, has laid down, as a legal principle, that such sentence can be awarded only in 'rarest of rare cases when the alternative option is unquestionably foreclosed'. No litmus is provided nor any test formulated to discern precisely what is the rarest of the rare case in which the alternative option is thus foreclosed.

57. In Bheru Singh vs. State of Rajasthan , reported in (1994) 2 Supreme Court Cases 467, the Supreme Court, while confirming the death sentence on the appellant, Bheru Singh, for cold-blooded and gruesome murder of wife and five children, in paragraph 28, has observed as under:

"28. While dealing with the question of sentence in Dhananjoy Chatterjee vs. State of West Bengal (1994) 2 SCC 220 : 1994 SCC (Cri) 358 this Court observed that the rising crime rate had made the criminal sentencing by the courts a subject of concern and though it is not possible to lay down any cut and dried formula relating to imposition of sentence and went on to say: (SCC p.239, paras 14-15)

'The object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

58. Aggravating circumstances against the appellant are as under:

The appellant, who was the father of four daughters, eldest of whom was aged 20 years of marriageable age and others were minors, had set them on fire ruthlessly and brutally by pouring petrol on them while they were in deep sleep. The father was the natural guardian of the daughters and it was his duty to protect the daughters rather than to set them on fire. The conduct of the appellant demonstrates that he had no feeling or sympathy for female members of his family. To him, it appears that the female children were liability as he had to manage for their education and get them married by spending a good sum of amount. The fact that the appellant had saved his male child aged about five years shows his evil design to finish all his female children to get rid of difficulties - financially and socially. The deceased female members had suggested to the appellant to change the house as they did not like to stay there. The appellant had no right to take away lives of his family members in a cruel and ghastly manner who had done no wrong nor had caused any harm to the appellant. The appellant had taken full advantage of the situation when the five female members were sleeping in a room admeasuring 9 ft x 10 ft and had selected early morning hours when normally human being is found in a deep sleep. The appellant had made out false ground that he wanted to commit suicide and as he became nervous, he had postponed idea of committing suicide. This making out of false ground of committing suicide speaks volumes about evil design and pre-planned strategy to commit murders of all five female members. Another false ground made out by the appellant was that when he postponed idea of committing suicide, he felt head-ache and decided to

prepare tea on a kerosene stove and due to flames of stove fire had taken place in the kitchen which had spread over to the adjoining room due to spilling of petrol. In our view, this false ground was made out by the appellant in his written explanation Exh.109 to misguide the Court with a view to shield his crime. It may be mentioned that, even if there was fire in the kitchen due to flames of kerosene stove, the plastic can which was found intact could not have been remained in that condition and would have been destroyed in fire. In our view, by taking out petrol from the plastic can and filling it in steel bowl one after other and pouring on deceased persons demonstrates strong motive of the appellant for finishing all the female members. The appellant had shown no mercy towards his wife and daughters who were in helpless condition yelling for help. P.W.6, Bhavesh Tulsibhai, had deposed that he had heard shrill voices coming out from the house of the appellant, yet the appellant did not care to save them, instead, ran away from the place of incident leaving female members in helpless condition. The appellant did not sustain serious injuries due to fire in his house and he could have very well called the fire brigade or might have taken help of the neighbours to extinguish fire to save lives of five members of his family. Instead, the appellant had ran away to a safe place leaving the female members in dying condition. The appellant after running away from his house had made out different versions about the incident of fire to shield the real crime. Nothing is brought on record whether the appellant had attended the funeral ceremony of the deceased members of the family even though he had come to know that all the five female members had died while he was in the hospital. All these circumstances, in our view, indicate that the appellant had no love or affection towards female members of the family and had finished them in a most ruthless manner with pre-planned strategy.

59. Mitigating circumstances in favour of the appellant are as under:

At the time of the incident, the appellant was about 42 years old hailing from a poor family and had no criminal background. It is submitted that the appellant has to look after his minor son aged five years and, if the appellant is sentenced to death, the minor son would be deprived of the shelter of the father. It is also contended that the appellant should be given a chance to get himself reformed and there was no danger or threat to the society and it Is not likely that the appellant, after undergoing sentence of life imprisonment, would

cause any violence to the members of the society.

60. We may mention here that, when the appellant was asked about punishment of death sentence to be imposed on him, he had not stated any mitigating circumstance in his favour. The learned Additional Sessions Judge had given an opportunity to the appellant to state mitigating circumstances if any when death penalty was going to be imposed on him, yet the appellant had not pointed out any mitigating circumstance in his favour. Instead, he had tried to delay the sentencing procedure by giving applications after applications to delay the pronouncement of the sentence. Even if we accept the submissions made by the learned counsel for the appellant, these are the only mitigating circumstances in favour of the appellant. On the other hand, if we evaluate aggravating circumstances, they are more in number and would outweigh the mitigating circumstances. The appellant had preplanned heinous and brutal act of finishing female members of his family. He had selected highly inflammable substance to set ablaze his family members by buying five liters of petrol. He had kept plastic can of petrol in the kitchen so that it can be used easily. The appellant, because of financial difficulties, had visualized that he will have to incur expenses for education of his daughters, their marriage and even after their marriage, he will have to spend amount for after marriage ceremonies like delivery expenses etc. The appellant had disputes with his wife about the house wherein they were residing. The same wife had given birth to five children and had looked after the appellant. The eldest daughter was, at the time of the incident, aged about 20 years. The marriage between the appellant and the deceased wife must have taken place prior to 22 years of the incident. The wife must have taken great pains to look after the appellant and his children. The appellant had totally ignored the sacrifices the wife had given for maintaining the family and giving birth and upbringing of five children. The appellant appears to be thankless and hard-hearted person, who has no love or affection either for his wife or his children. Still in the Indian society, there is a craze for male child. In the rural areas, female child is looked with contempt and the present case is a glaring example of the greed for a male child. Buying petrol prior to the date of the incident and keeping it in the kitchen and not keeping it outside the house or varanda, also speaks about evil-design of the appellant. Normally, highly inflammable substance is not kept in the house. Naturally it would not be kept in the kitchen where it can catch fire easily. The appellant had

selected early morning hours around 3 a.m. when all the five female members and the neighbours were in deep sleep. The appellant had used almost five liters of petrol for pouring it on five persons who were in deep sleep. He had not shown any mercy to five innocent persons and, after pouring petrol on them, had set them on fire. He had not thought of minor and innocent daughters who were in deep sleep and who had not given any occasion for any provocation to the appellant for resorting to such a heinous crime. The appellant had deliberately kept his son aged five years at a safe place while setting ablaze five female members. By giving different versions of the incident to the police constable at Hudco Police Chowky, to the Doctors on duty at the Civil Hospital at Rajkot, and lodging first information report before the investigating officer, also speak volume that the appellant wanted to conceal the heinous crime. The ruthless conduct on the part of the appellant does not call for sympathy. The life of the appellant cannot be spared just because he has to look after the male child aged about five years. The Court cannot ignore the fact that five innocent persons were roasted alive by the appellant. Did he show any mercy towards the female membes when they had raised cries ? Instead he left them in the dying condition. In our opinion, the conduct of the appellant does not deserve any sympathy for his heinous act of causing murders of five innocent persons. We do not know whether the appellant when came to know about the deaths of five female members of the family, had attended their funeral ceremonies.

61. The learned counsel for the appellant, Mr. M.J. Budhabhatti, has vehemently submitted that the present case does not call for extreme penalty and cannot be termed as rarest of rare cases, wherein, imposition of death sentence is called for. In support of his submission, the learned counsel for the appellant, Mr. M.J. Budhabhatti, has invited our attention to the decision of the Apex Court in the case of Shaikh Ayub vs. State of Maharashtra AIR 1998 Supreme Court 1285, wherein, the Supreme Court had not confirmed death sentence on appellant, Shaikh Ayub, for committing murder of his wife and five minor children. The above case was based on circumstantial evidence, wherein, appellant had some suspicion regarding character of wife. The facts and circumstances of the case clearly indicated that the appellant had killed his wife and his children because of unhappiness and frustration and not because of any criminal scandal. In light of above facts and circumstances, the Supreme Court set aside the sentence

of death and imposed sentence of imprisonment of life.

62. Learned counsel for the appellant, Mr. M.J. Budhabhatti, has submitted that, in case of circumstantial evidence, normally, death penalty should not be imposed. In support of his submission, learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of State of Gujarat vs. Dindol, reported in 1994 Criminal Law Reporter (Guj.) 148, wherein the Division Bench of this High Court, in paragraph 45, has ruled that, "we are of the firm opinion that when the conviction is based on circumstantial evidence, to award capital punishment may be even in a case where as many as six deaths are there, it would not be at all safe because the circumstances being what they are, it will indeed be a very tricky situation and relying solely on that, we do not feel that the accused cannot be held guilty in this or in any other case though on merits we have held otherwise in the instant case." It is further ruled that assuming that there were circumstances indicating guilt of the accused, it will not be at all safe to award capital punishment.

63. Learned counsel for the appellant, Mr. Buddhabhatti, has invited our attention to the decision of the Apex Court in the case of Sheikh Abdul Hamid vs. State of M.P. reported in AIR 1998 Supreme Court 942. The above case was of circumstantial evidence wherein it was not pointed out by the prosecution that it was cold-blooded murder and there was nothing on record to show how the murder had taken place. The Apex Court therefore, in the facts and circumstances of the case, had observed that, "in the absence of such evidence, we do not find that the case before us falls within the category of rarest of rare case".

64. Learned Public Prosecutor, Mr. A.D. Oza and learned Assistant Public Prosecutor, Mr. K.P. Rawal, on the other hand, placed reliance on the judgment of the Apex Court in the case of Ramdeo Chauhan @ Rajnath Chauhan v. State of Assam [(2000) 7 SCC 455], wherein the appellant was charged for having caused the death of four persons of a family and having caused injuries with the sharp-edged weapon to Smt. Jayanti Das, the mother of deceased 1 and Shri Rajen Hazarika, neighbour of the deceased. On proof of charges, the trial court convicted the appellant for the offences punishable under Sections 302, 326, 325 and 323 IPC and sentenced to death under Section 302 IPC. An argument was advanced by the learned counsel for the accused before the Supreme Court that there was no direct evidence available in the case and it

would not be safe to convict and sentence the appellant for the offence of murder as has been done by the courts below. The Supreme Court, while rejecting the argument of the learned counsel, held that, 'it is generally believed and accepted that the witnesses may lie but the circumstances cannot. The Supreme Court, in paragraph 13, while awarding extreme penalty of death, has observed as under:

"It is true that in a civilised society a tooth for a tooth, and a nail for a nail or death for death is not the rule but it is equally true that when a man becomes a beast and a menace to the society, he can be deprived of his life according to the procedure established by law, as the Constitution itself has recognised the death sentence as a permissible punishment for which sufficient constitutional provision for an appeal, reprieve and the like have been provided under the law. It is true that the life sentence is the rule and death sentence is an exception. We are satisfied that the present case is an exceptional case which warrants the awarding of maximum penalty under the law to the accused appellant. The crime committed by the appellant is not only shocking but it has also jeopardised the society. The awarding of lesser sentence only on the ground of the appellant being a youth at the time of the occurrence cannot be considered as a mitigating circumstance in view of our findings that the murders committed by him were most cruel, heinous and dastardly. We have no doubt that the present case is the rarest of the rare requiring the maximum penalty impossible under law."

Therefore, in our view, it is not a rule or settled principle of law laid down by the Apex Court that no death penalty can ever be imposed when case of the prosecution rests on circumstantial evidence. In the case of Anant Chintaman Lagu vs. The State of Bombay, reported in AIR 1960 Supreme Court 500, the Supreme Court had confirmed death sentence on the appellant wherein also, the case of the prosecution had rested entirely on circumstantial evidence. Therefore, we are of the view that, if circumstances of the case so warrant and if the case falls within category of rarest of rare case, death sentence can be imposed even if case of prosecution is based on circumstantial evidence.

65. In the case of Machhi Singh and others v. State of Punjab, reported in AIR 1983 SC 957, the Apex Court has considered in what circumstance the death sentence can be imposed on a member of the community when he violates the principle of humanistic edifies by killing

another member. It would be relevant at this stage to refer to the observations made by the Apex Court in paragraphs 32 to 35 in the case of Machhi Singh (supra), which are as under:

"32. The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence in no case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime such as for instance :

I Manner of Commission of Murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II Motive for commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

III Anti-social or socially abhorrent nature of the crime.

(a) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV Magnitude of crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V Personality of victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity. (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust. (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

33. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The

following propositions emerge from Bachan Singh's case:
(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime';
(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;
(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

34. In order to apply these guidelines inter alia the following questions may be asked and answered :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for death sentence ?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

35. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so."

66. The principles laid down in Machhi Singh's case (supra) were followed by the Supreme Court in Gentela Vijayavardhan Rao and another vs. State of Andhra Pradesh, reported in AIR 1996 Supreme Court 2791, and in Ravji @ Ram Chandra v. State of Rajasthan, reported in 1996 (3) Gujarat Law Reporter p.229. In Gentela Vijayavardhan Rao (supra), the Supreme Court has ruled that, "when its collective conscience is shocked that it

will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards disirability or otherwise of retaining death penalty". In Ravji @ Ram Chandra (supra), the Supreme Court has ruled that, "the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been prepetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal".

67. The guidelines indicated by the Apex Court in Machhi Singh's case (supra) clearly point out that the community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime and, thereafter, the Court has given five instances. The present case would fall in category 'V' i.e. namely, 'personality of victim of murder'. When the victim of murder is an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, the case would certainly fall in the category of rarest of rare cases. In the present case, four daughters and the wife were murdered mercilessly when they were in deep sleep.

68. The barbaric, gruesome and heinous type of crime which the appellant committed is a revolt against the society and an affront to human dignity. It clearly appears from the totality of the circumstances that the appellant was devoid of all traces of humanity. He is, in our opinion, a veritable 'wolf', as can be bracketed in the dictum that he is as much misplaced in a civilised society as wolves would be in a populous territory.

69. In the light of the aforesaid special features of this case, it must be held that this is one of the rarest of the rare cases in which capital sentence is required to be inflicted on the appellant. We feel ourselves duty bound to confirm the sentence of death as imposed on the appellant by the learned Additional Sessions Judge, lest the administration of justice and entire sentencing procedure may get reduced to a stage of mockery and ridicule in the society, especially for those who after perpetrating pre-meditated brutal crimes may escape with an impression that whatever be the nature of the atrocities that they may deliberately choose to inflict on innocent helpless victims and however gross their mass massacre may be, they are not likely to be ever inflicted

capital sentence by courts charged with the duty to administer justice. We, therefore, cannot refuse to sign the death warrant against the appellant in the present case.

70. We have also carefully gone through the special reasons given by the learned Additional Sessions Judge in paragraphs 71 to 74 of his judgment. We find that all these special reasons narrated by the learned Additional Sessions Judge therein are well made out on the record of this case and they clearly indicate that this is a fit case for imposing the extreme penalty of death on the appellant. We are indeed sad that it has become our painful duty to confirm the death sentence imposed on the appellant by the learned Additional Sessions Judge.

71. We have paused to consider whether the appellant needs to be leniently dealt with, but having repeatedly recapitulated his action against the innocent persons, we are constrained to confirm the capital sentence.

72. As a result of foregoing discussion, we uphold the conviction and the sentence of death imposed upon the appellant by the learned Additional Sessions Judge for the offence under Section 302 of the Indian Penal Code. The imposition of fine of Rs.5,000/- on the appellant by the learned Additional Sessions Judge in the impugned judgment is set aside. Criminal Appeal No. 540 of 2000 filed by the appellant against the conviction and the sentence of death imposed on him is dismissed. The submission made by the learned Additional Sessions Judge under Section 366(1) of the Code is accepted and the death sentence is confirmed.

September 18 , 2001 (M.H. Kadri,J.)

(R.P. Dholakia, J.)

CRIMINAL CONFIRMATION CASE No 3 of 2000

with

Criminal Appeal No.540 of 2000

STATE OF GUJARAT

Versus

VASHRAM NARSHIBHAI RAJPARA

CORAM: M.H. Kadri & R.P. Dholakia, JJ.

FARAD

For the reasons stated in the C.A.V. Judgment, the Honourable Court has passed the following order:

"As a result of foregoing discussion, we uphold the conviction and the sentence of death imposed upon the

appellant by the learned Additional Sessions Judge for the offence under Section 302 of the Indian Penal Code. The imposition of fine of Rs.5,000/- on the appellant by the learned Additional Sessions Judge in the impugned judgment is set aside. Criminal Appeal No. 540 of 2000 filed by the appellant against the conviction and the sentence of death imposed on him is dismissed. The submission made by the learned Additional Sessions Judge under Section 366(1) of the Code is accepted and the death sentence is confirmed."

September 18, 2001 S.Doraiswamy
Private Secretary